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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12
13 **CRAIG RICHARD CHANDLER,**

17-cv-00325-EMC

14 Petitioner,

EXHIBITS

15 v.

16 **SCOTT FRAUENHEIM, Warden,**

17 Respondent.
18

19
20 Exhibit 3

State Court Reporter's Transcript (Vols. 10-13)
21
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23
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EXHIBIT 3

(Vol. 10)

TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

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THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

Plaintiff - Respondent,)

v.)

No. C1223754

CRAIG RICHARD CHANDLER,)

Defendant - Appellant.)

COPY

VOLUME 10

PAGES 795 - 935

JULY 17, 2013

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REPORTER'S TRANSCRIPT ON APPEAL
FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY

---o0o---

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: OFFICE OF THE ATTORNEY GENERAL
BY: KAMALA D. HARRIS,
Attorney General of the State
of California

FOR DEFENDANT-APPELLANT: In Propria Persona

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DEFENDANT.

---o0o---

JULY 17, 2013

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JAMIE L. MIXCO
C.S.R. No. 12708

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1 San Jose, California July 17, 2013

2 PROCEEDINGS

3 THE COURT: Thank you, ladies and gentlemen.

4 Record will reflect all members of the jury are present, both

5 counsel are present, Mr. Chandler is present in the

6 courtroom.

7 And as I recall, Ms. Filo, we were continuing with

8 the reading of the preliminary examination transcript of

9 Becky's testimony; correct?

10 MS. FILO: We were, Your Honor. And before we

11 excuse the reporter for the remainder of the reading, Mr.

12 Madden and I wanted to put on the record in front of the jury

13 that the exhibits that were used at the preliminary hearing

14 are the same as two of the exhibits that are being used in

15 this proceeding. And if I may approach, I'll --

16 THE COURT: Yes.

17 MS. FILO: For the jury's clarification, the one

18 that has -- the picture that has the three post-its on it,

19 that are titled 1, 2, and 3 are from the preliminary hearing.

20 They were Exhibit A in the preliminary hearing, and the --

21 what is now A-1 in the trial is from the preliminary hearing,

22 and it was Exhibit B. So as we're reading this transcript,

23 the one with three post-its on it is actually preliminary

24 hearing Exhibit A. The one with the two post-its on it, it

25 is Exhibit B from the preliminary hearing. In this

26 proceeding, they are A-2 and A-1 respectively.

27 THE COURT: Thank you. You may proceed, Ms. Filo,

28 when you are ready.

1 MS. FILO: Thank you, Your Honor.

2 (Whereupon, the record was read, not reported.)

3 THE COURT: We'll go back on the record. The
4 record will reflect that we just concluded reading pages 7
5 through 56 of Becky's preliminary examination testimony.

6 Ms. Filo, could you give me the date of the
7 testimony?

8 MS. FILO: May 21st, 2012.

9 THE COURT: Okay. Thank you.

10 MS. FILO: And that exhibit, the transcript has
11 been marked as People's Exhibit 4.

12 THE COURT: Correct. Thank you.

13 And at this time, Ms. Filo, you ready to call your
14 next witness?

15 MS. FILO: Yes, Your Honor. Thank you. The People
16 call Ms. Laurie.

17 LAURIE DOE,

18 Being called as a witness on behalf of the People,
19 having been first duly sworn, was examined and testified as
20 follows:

21 MS. FILO: Your Honor, the witness is accompanied
22 by advocate Elvia Ricas (phonetic).

23 THE COURT: Okay. Ma'am, you understand you're not
24 to encourage, prompt, or suggest any of the answers?

25 MS. RICAS: Yes.

26 THE COURT: Okay.

27 Good morning, Laurie.

28 THE WITNESS: Good morning.

1 THE COURT: Could you spell your first name for me?

2 THE WITNESS: L-a-u-r-i-e.

3 THE COURT: Very good. We're going to ask when you
4 answer questions to talk into the microphone so we could hear
5 you.

6 THE WITNESS: Okay.

7 THE COURT: I know you talked to Ms. Filo about her
8 asking you questions today, so I'm going to let her start
9 with her questions. Okay?

10 THE WITNESS: Yes.

11 THE COURT: And while we're asking you questions,
12 if there is any time that you get tired and you want a break,
13 let me know and let Ms. Filo know and I will take a break for
14 you. Okay?

15 THE WITNESS: Okay.

16 THE COURT: Thank you.

17 Ms. Filo.

18 MS. FILO: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MS. FILO:

21 Q. Okay. Laurie, I have some questions for you. Okay?

22 A. Um-hum.

23 Q. Okay. How old are you right now?

24 A. Nine.

25 Q. And when is your birthday?

26 A. November 18th.

27 Q. Do you know what year you were born?

28 A. I think it was in 2003.

1 Q. Okay. So you're going to be ten this year?

2 A. Yes.

3 Q. And you're going into what grade?

4 A. Fifth.

5 Q. Fifth grade. So, Laurie, you know the difference
6 between telling the truth and telling a lie; right?

7 A. Yes.

8 Q. So if I told you that I had blond hair, would that be
9 the truth or would that be a lie?

10 A. A lie.

11 Q. A lie. Because I don't have blond hair, do I?

12 A. No.

13 Q. And if I said that I'm wearing a black shirt, would that
14 be the truth or would that be a lie?

15 A. That would be the truth.

16 Q. Because I'm wearing a black shirt; right?

17 A. Yes.

18 Q. Okay. So when you raised your right hand, you promised
19 to tell us the absolute truth; right?

20 A. Yes.

21 Q. Okay. Could you promise me that you are going to do
22 that today?

23 A. Yes.

24 Q. And, Ms. Laurie, do you know the difference between real
25 things and make-believe things?

26 A. Yes.

27 Q. Yeah? So what did you have for breakfast this morning?

28 A. McDonald's.

1 Q. McDonald's. And if I said, Ms. Laurie, you went to
2 McDonald's this morning, that would be a real thing; right?

3 A. Yes.

4 Q. Okay. But if I said, Laurie, fairies came to visit you
5 this morning, would that be a real thing or a make-believe
6 thing?

7 A. A make-believe.

8 Q. Okay. So we're going to promise today that we're only
9 going to talk about true things and things that really
10 happened. No lies and no make-believe; is that fair?

11 A. Yes.

12 Q. Okay. Laurie, are you super nervous about testifying
13 today?

14 A. Yes.

15 Q. Yeah? How come?

16 A. Because it was kind of scary for me to be here.

17 Q. Kind of scary to be here?

18 THE COURT: Thank you, Ms. Filo. If you'd pull it
19 over because she's sort of facing you.

20 BY MS. FILO:

21 Q. You know what I'm going to do, I'm going to scoot you a
22 little bit over. Okay. We're going to make this -- this is
23 your big moment where you get to talk into the microphone.

24 Okay?

25 A. Okay.

26 Q. So are you super nervous?

27 A. Yes.

28 Q. How come?

1 A. Because it's actually very scary for me, because I --

2 MR. MADDEN: Your Honor, I'm sorry. Laurie, excuse
3 me, I can't hear.

4 BY MS. FILO:

5 Q. How about I stand right in front of you. Okay? Could I
6 stand right here and you could talk right like this?

7 MR. MADDEN: I apologize, Your Honor. I'm thinking
8 the opposite. Ms. Filo stood a little bit away, Laurie will
9 be inclined to speak a little louder.

10 BY MS. FILO:

11 Q. Could you speak up a little bit, Laurie? Could you try
12 really, really hard?

13 MR. MADDEN: May we approach the bench, Your Honor?

14 THE COURT: No. I'm trying to get the microphone
15 to her right, so when she's facing Ms. Filo she could talk
16 into the microphone.

17 MR. MADDEN: Yeah. I think if we keep the
18 microphone between her and Ms. Filo, that will be the best
19 that we could do. Hopefully that will be good enough.

20 THE COURT: Okay. I think this will work, Ms.
21 Filo. I don't want you blocking the jurors from her.

22 MS. FILO: Could everyone see, Laurie? No.

23 BY MS. FILO:

24 Q. I'm trying to get close to you so I could hear you and
25 you could talk right into the microphone.

26 THE COURT: I'm sorry, Laurie. I really apologize.
27 I don't want you to be interrupted having to be asked
28 questions more than once. This is a problem that we'll fix

1 at noon.

2 MS. FILO: Okay.

3 MR. MADDEN: Your Honor, may I move?

4 THE COURT: Yes, you may. I don't want your view
5 blocked.

6 BY MS. FILO:

7 Q. Laurie, you said you are going to start the fifth grade?

8 A. Yes.

9 Q. All right. And you said you were nervous about
10 testifying. You were just going to tell me why. Why are you
11 so nervous?

12 A. Because I'm a little girl. This is so strange for me
13 being in court because I normally think about, like, older
14 people go here.

15 Q. This is -- seems like a place where only adults go;
16 right?

17 A. Yes.

18 Q. Kids go to playgrounds and fun places?

19 A. Yeah.

20 Q. Not courtrooms; right?

21 A. No.

22 Q. All right. Well, how about this? Kids talk to adults;
23 right?

24 A. Yes.

25 Q. Okay. Well, this is a really special place where kids
26 get to tell adults what to do. So if I say something that
27 you don't understand, you get to tell me: Ms. Alison, I do
28 not understand you. Or, you get to tell me: Ms. Alison,

1 that question is not right. I'm going to tell you that you
2 get to tell me what is right and what's wrong. Okay?

3 A. Okay.

4 Q. Okay. So, Laurie, I want to ask you where you -- where
5 did you go to school when you started third grade?

6 A. O.B. Whaley.

7 Q. And who was your teacher?

8 A. Third grade; right?

9 Q. Third grade.

10 A. Mr. Chandler.

11 Q. Mr. Chandler. Okay. And was that class -- did it have
12 second-graders and third-graders in it?

13 A. Yes.

14 Q. But you were one of the third-graders?

15 A. Yes.

16 Q. Did the third-graders sit on one side and the
17 second-graders sat on the other side of the room?

18 A. Yes.

19 Q. Who was your best friend in third grade?

20 A. Well, I actually have three friends in second grade.

21 Q. Second grade or third grade?

22 A. Second grade.

23 Q. Who was your best friends in second grade?

24 A. Veronica.

25 Q. Veronica?

26 A. Lea.

27 Q. Lea? Okay.

28 A. And Melanie.

1 Q. Melanie. Okay. Did they go with you to Mr. Chandler's
2 class in third grade? Were they in a different classroom?

3 A. They were in the same classroom.

4 Q. Were they still your best friend in third grade?

5 A. Second grade.

6 Q. No? In third, you were in Mr. Chandler's classroom for
7 third grade; right?

8 A. Yes.

9 Q. So were Veronica and Lea and Melanie, were they in Mr.
10 Chandler's classroom?

11 A. Yes.

12 Q. And they were your best friends in Mr. Chandler's
13 classroom?

14 A. Yes.

15 Q. So tell me some of the fun things you would do with your
16 best friends?

17 A. Well, we would, like, play tag a little bit and then go
18 out to the playground and do some things that just pop out of
19 our heads, like, what should we do?

20 Q. You just get to pick whatever you want to do; right?

21 A. Yeah.

22 Q. Yeah? Okay. So, Laurie, I want to ask you about being
23 in Mr. Chandler's classroom. Do you remember what his
24 classroom looked like?

25 A. A little bit.

26 Q. Okay. So if you look right behind you, we have two
27 pictures. They are marked in the corners A-1 and A-2. Do
28 you recognize what's in those photographs?

1 A. Yes.

2 Q. What does that look like?

3 A. It looks like his desk where he would normally sit down.

4 Q. Okay. So that's where Mr. Chandler would sit, at that
5 desk right there?

6 A. Yes.

7 Q. All right. And then in A-2, there is a picture of
8 this -- looks like a child's desk. Is that a child's desk?

9 A. Yes.

10 Q. And is that where the students sat in desks like this?

11 A. Yes.

12 Q. So Mr. Chandler's desk was different. It's the one in
13 the middle of the picture of A-2?

14 A. Yes.

15 Q. All right. And back behind here in A-2 there is a big
16 cabinet. Do you see that?

17 A. Yes.

18 Q. Okay. And what kind of things were in the cabinet, do
19 you know?

20 A. No.

21 Q. No? Okay. Did you ever -- did you ever get stuff out
22 of the cabinet?

23 A. No.

24 Q. No? All right.

25 So, Laurie, I want to ask you about whether or not
26 you ever -- whether or not you were ever in Mr. Chandler's
27 classroom with a blindfold on?

28 A. Yes.

1 Q. Did that happen?

2 A. Yes.

3 Q. That's one of the real things that happened?

4 A. Yes.

5 Q. Okay. Can you tell me how come you were in the
6 classroom with a blindfold on?

7 A. I don't remember.

8 Q. Okay. Do you -- were you -- were you there by yourself?

9 A. Yes.

10 Q. With Mr. Chandler? Just the two of you?

11 A. Yes.

12 Q. When was this? When during the day did this happen?

13 A. During lunch recess.

14 Q. Lunch recess. Do you know how many times you were in
15 the classroom with Mr. Chandler by yourself with a blindfold
16 on? Do you know how many times that happened?

17 A. I don't really remember that either.

18 Q. Okay.

19 MR. MADDEN: I'm sorry, Your Honor. I didn't hear
20 that.

21 MS. FILO: I don't really remember that either.

22 BY MS. FILO:

23 Q. Do you know if it was more than one time?

24 A. Um, I don't remember.

25 Q. Okay. That's a totally fair answer. Okay. Laurie, if
26 you don't remember something, you could tell me: I don't
27 remember. All right?

28 A. All right.

1 Q. Okay. So you said that you were in the classroom with
2 the blindfold on. What happened when you were in the
3 classroom with Mr. Chandler with the blindfold on?

4 A. Well, I don't really remember that much, but I do
5 remember it was, like, this game we tried in the class.

6 Q. Okay. So had you already done the game in the class?

7 A. Yes.

8 Q. So you had done the game in the class, but then you came
9 in to do the game by yourself?

10 A. Yes.

11 Q. How did you get in the classroom?

12 A. Miss -- a yard duty let me in the classroom.

13 Q. So the yard duty came and got you?

14 A. Yes. She told me that I had to go in the classroom or
15 something, but I don't really remember what she said at that
16 time.

17 Q. Okay. So the yard duty came and got you and brought you
18 into the classroom; is that right?

19 A. Yes.

20 Q. Do you know what classroom number was Mr. Chandler's?

21 A. I think it was number 18.

22 Q. Okay. When you went into the classroom, was the door
23 open or closed?

24 A. Open.

25 Q. Okay. And after you went inside, did it stay open or
26 did it close?

27 A. It closed.

28 Q. Okay. And then can you tell me what happened after

1 that?

2 A. Well, he put the blindfold on and then I was just
3 sitting on the chair.

4 MR. MADDEN: I apologize, Your Honor.

5 THE COURT: Then she was just sitting on the chair.

6 MR. MADDEN: Before that.

7 THE COURT: He put the blindfold on me.

8 BY MS. FILO:

9 Q. Okay. I'm going to put this right in front of you.
10 Okay?

11 So he put the blindfold on you and then you were
12 sitting in a chair; right?

13 A. Yes.

14 Q. Then what happened?

15 A. I don't remember.

16 Q. Okay.

17 A. But I do remember, like, this game about this woman who
18 couldn't see at all, but she was a teacher.

19 Q. Okay. So did -- did he have you touch anything?

20 A. He had me feel things.

21 Q. Did you -- what did you feel them with?

22 A. My feet.

23 Q. Your feet?

24 A. (Shakes head up and down.)

25 Q. Okay. Did you have your shoes on?

26 A. No, my socks.

27 Q. Your socks were on?

28 A. (Shakes head up and down.)

1 Q. And what did the thing feel like that he put on your
2 feet?

3 A. Well, I don't exactly remember.

4 Q. Okay. Where were your feet? Were your feet down on the
5 ground? Where were they?

6 A. On a student's table.

7 Q. So he had you sit in a chair and put your feet up on the
8 desk?

9 A. Yes.

10 Q. A little desk; right? Like the one that's in the
11 picture on A-2?

12 A. Yeah.

13 Q. Do you remember anything about what it felt like?

14 A. No.

15 Q. No? And did you always have your socks on?

16 A. Yes.

17 Q. Okay. And then did he have you -- did he do anything
18 else?

19 A. No.

20 Q. No? Did he have you taste anything? Put anything in
21 your mouth?

22 A. I don't remember.

23 Q. You don't remember?

24 A. No.

25 Q. No? Do you remember how many times this happened?

26 A. Not really.

27 Q. Okay. You don't know if it was just one time or more
28 than one time?

1 A. Yes, I don't know.

2 Q. You don't know. Okay. Do you know if he put just one
3 thing on your feet or was it more than one thing?

4 A. I think it was more than one thing.

5 Q. Okay. Did you hear anything when he put something on
6 your feet?

7 A. No. But when I started getting inside the classroom and
8 I had the blindfold on, I heard a cabinet open.

9 Q. You heard a cabinet open?

10 A. Um-hum.

11 Q. Is that when you already had the blindfold on?

12 A. Yes.

13 Q. Do you know where the blindfold came from?

14 A. No.

15 Q. You didn't see where it came from in the classroom?

16 A. No.

17 Q. No? It was just there?

18 A. Yes.

19 Q. Okay. And you said that you heard a cabinet open?

20 A. Yes.

21 Q. Did you hear anything else while you had the blindfold
22 on?

23 A. No.

24 Q. No? Laurie, you talked to the police officers in this
25 case; right?

26 A. Yes.

27 Q. Yes? So when you -- do you remember where you talked to
28 them?

1 A. It was in the school office in this room where a lot of
2 bugs and stuff in there.

3 Q. Okay. And then did you go talk to them someplace else
4 away from school?

5 A. Yes. It was in the building, but I don't remember
6 exactly.

7 Q. Okay. But you remember talking to a police officer kind
8 of in a room. Did it have sort of pictures on the wall and a
9 big window?

10 A. Yes.

11 Q. Yes? Okay. And when you talked to the officers in the
12 case, did you do your absolute best to tell them the truth?

13 A. Yes.

14 Q. Okay. So, Laurie, you went several months ago up to San
15 Francisco. Do you know where San Francisco is?

16 A. Yes.

17 Q. The big city with lots of big buildings?

18 A. Yes.

19 Q. Yes? Did you talk to a woman there?

20 A. Yes.

21 Q. Yes? And did you tell her the truth about what happened
22 in Mr. Chandler's classroom?

23 A. Yes.

24 Q. Yes? What did you tell her?

25 A. I don't specifically know.

26 Q. You don't really remember what you told her?

27 A. No.

28 Q. Can you tell me -- do you remember anything that you

1 told her?

2 A. No.

3 Q. Do you remember telling her that Mr. Chandler put
4 something in your mouth?

5 A. I don't really remember.

6 Q. You don't remember?

7 A. No.

8 Q. No? Laurie, does it make you upset to think about Mr.
9 Chandler's classroom?

10 A. Sort of.

11 Q. How come?

12 A. Because it's something really difficult for me. I don't
13 think -- really want to remember about it.

14 Q. Okay. How come you don't want to remember?

15 A. Well, sometimes I forget things because my parents try
16 to make me feel happy. And sometimes some things just get
17 off of my brain and some of them still stay there.

18 Q. Okay. Could you tell me about anything in your brain
19 that still stayed there that makes you sad about Mr.

20 Chandler's classroom?

21 A. Well, one thing is that my mom really trusted all of my
22 teachers. She trusted Mr. Chandler. But when she heard that
23 that, she got really sad and I got really disappointed and I
24 felt bad for my mom.

25 Q. Okay. Are you okay?

26 A. (Shakes head up and down.)

27 Q. Do you want some water?

28 A. No.

1 Q. No? So is it only because you just didn't want to
2 disappoint your mom?

3 A. No. It was because -- because I tried to be happy and
4 like life. And my dad said, if you have to get, like, happy
5 before everything turns bad and you don't have a good time in
6 your life.

7 Q. Okay. So you said that you tried to forget some of the
8 things in Mr. Chandler's classroom; is that right?

9 A. Well, I tried to forget the things that actually very
10 hurtful, and -- well, I don't really know a lot of stuff,
11 because like I told you, my parents try to make me feel
12 happy.

13 Q. Okay. So are there some things that you just don't want
14 to remember about Mr. Chandler's classroom?

15 A. Well, I still have some things, but some of them I
16 really don't remember.

17 Q. Okay. So you said you still have some things that you
18 remember?

19 A. Yes.

20 Q. Could you tell me maybe other things that you remember?

21 A. Um, I remember, like, one day I accidentally, like,
22 opened -- like, my mom was giving me lunch, and when it was
23 lunchtime and when I opened the lid, the food just fell down.
24 And I went to my mom and I told her, and then the teacher,
25 Mr. Chandler, gave me -- to me and my mom, who was really
26 nervous, he said: Do you want a peanut butter and jelly
27 sandwich or something? And my mom didn't exactly know why he
28 was nervous until, like, right now.

1 Q. Okay. So I guess what I want to know, is there anything
2 else about being in Mr. Chandler's classroom, not about how
3 your mom reacted or your dad reacted, but anything else about
4 being in Mr. Chandler's classroom that you thought was bad?

5 A. I -- not really.

6 Q. Okay. So, Laurie, I want to ask you a little bit about
7 what the last two years have been like, or the last year and
8 a half have been like for you. Okay? Have you -- did you
9 talk to any of your friends about what Mr. Chandler did about
10 bringing you into the classroom?

11 A. No.

12 Q. No? Was this something that you wanted your friends to
13 know about?

14 A. Well, not really.

15 Q. No? How come?

16 A. Because sometimes I like to keep, like, some stuff away
17 from my friends, because sometimes when I tell some people, I
18 know some people say it helps you. It's much better. But
19 for me, it kind of stressed me. It was kind of a hurt
20 feeling.

21 Q. Okay. Laurie, have other kids been not nice to you
22 about what happened with Mr. Chandler?

23 A. I do not remember.

24 Q. You don't remember?

25 A. No.

26 Q. Were kids being not nice to you on the playground
27 whenever -- or making fun of you?

28 A. No.

1 Q. No? Okay. So, Laurie, have you told us everything that
2 you could remember about being in Mr. Chandler's classroom
3 the time that you were blindfolded and he put something on
4 your feet?

5 A. Yes.

6 Q. Okay. Did he ever have you touch anything with your
7 hands?

8 A. No.

9 Q. No? And did he ever have you -- did he ever put
10 anything on your face or on your cheeks?

11 A. No.

12 Q. And you don't remember anything about whether he put
13 anything in your mouth?

14 A. No, I don't remember.

15 Q. Okay. So, Laurie, I want to ask you one last time.
16 When you talked to the police officers, you did your best to
17 tell them the truth?

18 A. Yes.

19 Q. Were you nervous about talking to the police officers?

20 A. Well, I was scared, nervous, and confused because I
21 didn't know what was going on there. And I didn't -- I kind
22 of had my brain kind of fuzzy and I'm a little kid, so I'm
23 kind of afraid to talk to police.

24 Q. Okay. Did you not tell them something because you were
25 scared?

26 A. No. I was scared because I didn't know what was going
27 on at that time.

28 Q. Okay. Have you ever had to talk to police officers

1 before?

2 A. No, not really.

3 Q. No? Okay. And then you went up to San Francisco and
4 you met with a woman there; right?

5 A. Yes.

6 Q. Yeah? And did you tell her what happened in Mr.
7 Chandler's classroom?

8 A. Yes.

9 Q. Yes? Was it easier for you to talk to her than it was
10 for you to talk to the police officers?

11 A. It was kind of the same.

12 Q. Okay. What did you mean?

13 A. I mean, that I was still scared and confused because my
14 mom always told me that this would end one day and that I
15 wouldn't have to worry anything about this. And that kind of
16 got me confused and I was scared that I have to talk to her
17 because my parents had to be just waiting there and I would
18 have to be in the room alone with her.

19 Q. Okay. But she was a nice lady; right?

20 A. (Shakes head up and down.)

21 Q. Yes?

22 A. Yes.

23 Q. Okay. And when you talked to her, did you do your
24 absolute best to tell her the truth about what happened in
25 Mr. Chandler's classroom?

26 A. Yes.

27 Q. How long ago did you talk to that lady? Was it a long
28 time ago or just a little time ago?

1 A. I do not remember.

2 Q. You don't remember. Okay.

3 When you talked to her, did you do your best to
4 remember everything that happened in Mr. Chandler's room?

5 A. Yes.

6 Q. Yes? Okay.

7 Laurie, so have you told me everything you could
8 remember about being in Mr. Chandler's room with the
9 blindfold on?

10 A. Yes.

11 Q. Yes? Okay. One last question. You said that you
12 haven't talked to any of your friends about what happened in
13 Mr. Chandler's room --

14 A. Yes.

15 Q. -- is that right?

16 A. Yes.

17 Q. Okay. And have you talked to any of the kids at school
18 about what happened in Mr. Chandler's room?

19 A. Well, I did tell my friend it was kind of weird that
20 they had told me that I had to go inside the class, and my
21 friends were like: Yeah, that was weird.

22 Q. When you told them that you had to go in at lunchtime?

23 A. Well, they were there with me. They were -- and then
24 when I finished, they were in the class. And then we had to
25 do work and we have to choose our partners, like a group,
26 and -- well, they said: You want to be in our group? I'm,
27 like, okay. And then they were like: That's kind of weird
28 you had to come in here.

1 Q. Oh; they thought it was weird that you had to come in by
2 yourself?

3 A. Yes.

4 Q. Yes? Okay. Did you think it was weird?

5 A. Well, I was kind of scared, so I didn't actually think,
6 like, if it was weird or not.

7 Q. You were kind of scared?

8 A. (Shakes head up and down.)

9 Q. What were you scared off?

10 A. I don't know. I was just kind of scared to go in the
11 room by myself with someone.

12 Q. Okay. All right. Laurie, I think that's all the
13 questions I have. Okay? Mr. Madden is going to ask you some
14 questions now. Could you answer his questions just like you
15 answered mine?

16 A. Yes.

17 Q. Okay. Thank you, Laurie.

18 THE COURT: So, Laurie, like Ms. Alison just told
19 you, Mr. Madden is going to ask you some questions. But
20 before he starts, would you like to take a short break?

21 THE WITNESS: Yes.

22 THE COURT: Okay. We'll take a short break before
23 he starts his questioning and it will be for about 15
24 minutes. I'll order all members of the jury to report to the
25 jury assembly room on the second floor, and we'll make every
26 effort to call you back up at 10:30. Thank you.

27 (Whereupon, a brief recess was taken.)

28 THE COURT: Record will reflect all members of the

1 jury are present, both counsel are present, Mr. Chandler is
2 present. And, Ms. Filo, you could call Laurie back. Thank
3 you.

4 MS. FILO: Sorry.

5 THE COURT: Okay. Laurie has returned to the
6 courtroom, and I think we kind of fixed the microphone, so
7 you could move it around wherever you want so that you could
8 talk right into it. Okay?

9 Mr. Madden, when you are ready.

10 MR. MADDEN: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. MADDEN:

13 Q. Good morning, Laurie.

14 A. Good morning.

15 Q. My name is Brian Madden. I'm Mr. Madden and I'm going
16 to ask you some questions. Okay?

17 A. Okay.

18 Q. All right.

19 THE COURT: It's kind of hard, so you could --
20 there you go. Thank you.

21 BY MR. MADDEN:

22 Q. Now, I want to tell you that I'm sure that I do not hear
23 as well as you do. Okay?

24 A. Okay.

25 Q. And I've had a little bit of trouble hearing everything
26 that you said, so I'm standing here. I'm hoping that we're
27 close enough to where you'll lift your voice just a little
28 bit if you can so that I could hear what you are saying.

1 Okay?

2 A. Okay.

3 Q. All right. Now, if I ask you a question and you truly
4 do not remember or know the answer, just tell me that.

5 That's perfectly fine. Okay?

6 A. Okay.

7 Q. But if I ask you a question and you do know the answer,
8 I want you to tell me what the answer is. Okay?

9 A. Okay.

10 Q. All right. Now, this happened kind of a long time ago;
11 right?

12 A. Yes.

13 Q. All right. And I'm sure that you remembered it better
14 when you were speaking to the police officers than you do
15 now; right?

16 A. Sort of.

17 Q. Okay. In other words, as we get older, we forget
18 certain things; right?

19 A. Yes.

20 Q. All right. You've had that experience?

21 A. Yes.

22 Q. So if talking about something that happens the same day,
23 you remember what it is; right?

24 A. Yes.

25 Q. But if you are talking about something six months later,
26 a year later, sometimes you've forgotten what it was; right?

27 A. Yes.

28 Q. Okay. So that's what I'm going to -- one of the things

1 I'm going to ask you about. Okay?

2 A. Okay.

3 Q. All right. Now, the first thing I want to ask you
4 about, and this was the part I was having trouble hearing, I
5 think you mentioned something about a girl who couldn't see
6 or couldn't hear. And I think you were talking about
7 something that -- you were talking about or learning this in
8 Mr. Chandler's class. Am I right?

9 A. Sort of, kind of.

10 Q. Okay. Tell me what you remember about that.

11 A. Well, it was when they -- like any normal day in school
12 that we were learning with the whole class. And then he
13 taught us about this teacher who couldn't see and the kids
14 and the other teachers were laughing at her. And the way
15 that she knew where stuff was by feeling them and she knew
16 what they were by just touching them and --

17 Q. Was this something that you were talking about in Mr.
18 Chandler's class?

19 A. Well, yes.

20 Q. Okay. And was the whole class listening to this?

21 A. Yes.

22 Q. And was he reading to you from a book?

23 A. Yes.

24 Q. Okay. And was it a book about this -- I think you said
25 it was a teacher who couldn't see or couldn't hear?

26 A. Um, yes.

27 Q. And that she had to use her other senses, her sense of
28 feel and her sense of taste, to figure out what was going on

1 around her?

2 A. Well, it was only the feel of things.

3 Q. I'm sorry. I need you to speak up a little bit because
4 I didn't hear what you just said.

5 A. She only used the sense of feeling things.

6 Q. Feeling things?

7 A. Yes.

8 Q. You don't remember anything about taste then?

9 A. No.

10 Q. Okay. And would Mr. Chandler read that book to the
11 class?

12 A. Yes.

13 Q. Okay. But besides reading the book, he also talked
14 about it with the class; right?

15 A. Yes.

16 Q. Okay. Now, do you remember talking about -- or Mr.
17 Chandler talking about using a stick or something to feel
18 your way around?

19 A. No.

20 Q. You don't remember that?

21 A. No.

22 Q. Okay. Now, you remember being alone with Mr. Chandler
23 one time; right?

24 A. Well --

25 Q. I'm sorry. Let me -- I'm going to ask another question.
26 You don't have to answer that. That was a bad question.

27 You remembered being with Mr. Chandler when you had
28 a blindfold on one time; right?

1 A. Well, I only remember that I had to go to the classroom
2 and the yard duty took me over there, but I didn't exactly
3 know why I had to go there. But I really don't know.

4 Q. Well, I think I understand what you just said. But what
5 I'm really trying to ask you and what I'm trying to learn is,
6 is it true that you only remember being in his class one time
7 with the blindfold when you had to feel objects with your
8 feet?

9 A. Well, I -- I don't really.

10 Q. You don't really?

11 A. No.

12 Q. You don't really know?

13 A. No.

14 Q. Okay. Maybe it was one time?

15 A. I don't know.

16 Q. Okay. Well, do you remember coming to court in May of
17 last year and having to sit in a courtroom and talk about
18 this?

19 A. Yes.

20 Q. You remember that; right?

21 A. Um-hum, yes.

22 Q. That was a little more than a year ago; right?

23 A. I don't know.

24 Q. That's okay. That's my fault. I shouldn't have asked
25 that question.

26 And do you remember on that occasion that you said
27 you were only alone with Mr. Chandler one time when you were
28 blindfolded and felt something with your feet?

1 A. Well, I don't really remember.

2 Q. That's okay you don't remember.

3 Did Mr. Chandler ever put anything in your mouth?

4 A. I don't remember.

5 Q. You don't remember?

6 A. I don't really remember or know if he did or not.

7 Q. Okay. Well, let me see if I could help you. Do you
8 remember the lady that you talked with at O.B. Whaley School,
9 the first police officer you spoke with at the school?

10 A. The first police?

11 Q. Well, there was a woman that you spoke with who came to
12 the school; right?

13 A. Yes.

14 Q. Yes?

15 A. Wait. A police?

16 Q. With the police department?

17 A. Yes.

18 Q. All right. Her name was Lisa?

19 A. I don't remember --

20 Q. Okay.

21 A. -- her name.

22 Q. Okay. And do you remember telling her that Mr. Chandler
23 never put anything in your mouth?

24 A. I don't really specifically know what I told her. I
25 don't remember.

26 Q. Okay. You don't specifically know and you don't
27 remember; right?

28 A. Yes.

1 Q. Okay. That's fine. That's fine.

2 Did Mr. Chandler -- on the time that you were with
3 him in his classroom feeling objects on your feet, when he
4 was finished with that, did he ever tell you not to tell
5 anybody?

6 A. I don't remember that.

7 Q. Okay. Do you remember being asked that same question
8 when you were next door about a year ago in the other
9 courtroom?

10 A. No, I don't remember.

11 Q. Do you remember telling the judge in that case and the
12 lawyers in that case that he never told you anything about
13 not telling anyone?

14 A. Well, I don't remember specifically what I told them.

15 Q. The last word is you don't remember specifically what
16 you told?

17 A. Um, I don't specifically know what I told them.

18 Q. Okay. You don't remember?

19 A. No.

20 Q. Okay. Thank you.

21 I think I remember when you were talking before the
22 recess from the witness stand that the only thing that you
23 remember hearing in Mr. Chandler's classroom when you were
24 blindfolded was the opening of cabinet doors; right?

25 A. Yes.

26 Q. All right. You don't remember hearing anything else?

27 A. No.

28 Q. And do you remember police officers asking if you heard

1 any sounds like a zipper or belt or anything like that?

2 A. No.

3 Q. You don't remember that question being asked?

4 A. No.

5 Q. And you then would not remember your answer to that
6 question?

7 A. No.

8 Q. Do you remember telling the police officer that you
9 never heard the sound of any belt or zippers or anything like
10 that?

11 A. No.

12 Q. No, you don't remember?

13 A. (Shakes head side to side.)

14 Q. Okay. That's fine. That's fine.

15 Now, the cabinet that you heard open, I want to --
16 I'm going to go to -- for the record, this is A-2. I will
17 get a pointer. I'll be right back. Was there -- let me ask
18 another question. I apologize.

19 The cabinet that you were talking about, is that --
20 I'm putting this pointer around -- is that what you mean by
21 the cabinet?

22 A. I didn't know which cabinet it was.

23 Q. Okay. Fair enough. And do you know this cabinet is the
24 one that is right behind Mr. Chandler's desk; right?

25 A. Yes.

26 Q. And do you know if that was the cabinet where he kept
27 supplies?

28 A. Well, I don't know what's in there, but I think there is

1 some, like, supplies in there.

2 Q. Okay. Well, let me see if I could help you. Did you
3 ever see erasers in the classroom?

4 A. Well, there is, like, erasers for us to use.

5 Q. For what?

6 A. For us to use in the class.

7 Q. For the students to use?

8 A. Yes.

9 Q. Okay. And did you ever see any glue sticks in the
10 classroom?

11 A. Um, on our desk, yes.

12 Q. Any place in the classroom you remember seeing glue
13 sticks; right?

14 A. Yes.

15 Q. Okay. How about paper clips? Did you remember seeing
16 any paper clips in the classroom?

17 A. Only Mr. Chandler's desk.

18 Q. Yes? And pens, writing pens, do you remember seeing
19 those?

20 A. On the teacher's desk.

21 Q. Okay. And then the teacher's desk would be the desk
22 that's in the same photograph that I just pointed to, that's
23 this desk here; right?

24 A. Yes.

25 Q. Okay. And do you remember seeing any scissors in the
26 classroom?

27 A. Yes.

28 Q. Do you remember where you saw those?

1 A. On our desks.

2 Q. Whose desks?

3 A. I mean, like, in this box.

4 Q. A box. And where was the box?

5 A. I don't know -- remember.

6 Q. Okay. That's all right. Was that in the area of Mr.
7 Chandler's desk or the cabinet, if you remember?

8 A. I don't know.

9 Q. Okay. Do you remember telling the police that when you
10 were alone with Mr. Chandler blindfolded with your shoes off
11 but your socks on, you felt the objects that I just talked
12 about?

13 A. Um, what was the question again?

14 Q. I'll try to ask a shorter question.

15 Do you remember telling the police that you felt or
16 guessed that Mr. Chandler -- one of the things Mr. Chandler
17 touched your foot or feet with was an eraser?

18 A. I don't remember.

19 Q. Okay. That's fine. Do you recall telling the police
20 that one of the objects that you felt against your foot was a
21 paper clip?

22 A. Not really.

23 Q. Okay. Not really. When you said "not really," you
24 don't really remember?

25 A. No.

26 Q. Okay. And do you remember telling the police that you
27 felt a glue stick against your foot?

28 A. Um, a little bit.

1 Q. Do you remember that a little bit? Do you remember
2 telling the police that you were sure it was a glue stick;
3 right?

4 A. Yes.

5 Q. Okay. How long is a glue stick?

6 A. I don't remember.

7 Q. Okay. If I asked you to use your two fingers and just
8 sort of make-believe how long it was, do you think you could
9 do it, or you just don't remember?

10 A. Um, I think about, like, an inch or two.

11 Q. About an inch or two?

12 A. (Shakes head up and down.)

13 Q. Okay. I'm sorry. I'm just checking my notes. I'll be
14 right with you.

15 So I'm going to read some words to you and see if
16 that helps you remember how many times you were alone with
17 Mr. Chandler. Okay? I want you to just listen for a second.
18 All right?

19 MR. MADDEN: Your Honor, I'm reading from the
20 preliminary transcript Vol. 2 of 3, dated May 22, 2012, and
21 I'm on page 210.

22 Do you have that, Ms. Filo?

23 MS. FILO: Yes.

24 BY MR. MADDEN:

25 Q. Okay. And the question was asked:

26 "Okay. How many times did you stay in the room
27 with Mr. Chandler and put the blindfold on?" And the answer
28 was: "Once."

1 Do you remember saying that?

2 A. I don't remember much.

3 Q. Okay. My question is, do you remember saying the words
4 that I just read?

5 A. Um, I -- not really.

6 Q. Okay. That's fine. That's fine. Thank you.

7 So when you were -- when we were talking about the
8 teacher who couldn't see, I think you said earlier this
9 morning that she felt things. Is that what you said?

10 A. Yes.

11 Q. All right. And do you remember Mr. Chandler telling you
12 that you were going to be blindfolded?

13 MS. FILO: Objection, Your Honor. Calls for
14 hearsay.

15 THE COURT: Sustained.

16 MR. MADDEN: I'll rephrase that question, Your
17 Honor.

18 BY MR. MADDEN:

19 Q. But as you sit here this morning, you don't really
20 remember very much about this at all; right?

21 A. Yes.

22 Q. I'm sorry?

23 A. No, not really. I don't really remember that much.

24 Q. Okay. And you're saying that because you're telling the
25 truth. You really just don't remember; right?

26 A. Yes, I really just don't remember.

27 Q. Okay. And did Mr. Chandler ever have you touch anything
28 with your hands when you were alone with him with the

1 blindfold on?

2 A. No.

3 Q. Okay. Just your feet; right?

4 A. Just my feet.

5 Q. Okay. Do you remember if you were wearing long pants
6 that day?

7 A. No, I don't remember.

8 Q. Okay.

9 MR. MADDEN: Thank you, Your Honor. I have no
10 further questions.

11 THE COURT: Thank you, Mr. Madden.

12 Ms. Filo, redirect?

13 MS. FILO: Very briefly.

14 REDIRECT EXAMINATION

15 BY MS. FILO:

16 Q. Laurie, has anybody ever told you how to answer our
17 questions?

18 A. No.

19 Q. No? So has anybody ever told you that you need to tell
20 the police officers that this happened or that happened?

21 A. (Shakes head side to side.)

22 Q. No? You are shaking your head no?

23 A. No.

24 Q. Okay. So nobody has ever tried to give you answers.
25 Does that make sense?

26 A. Um, not really.

27 Q. Not really? Okay. Has everybody always just told you
28 to tell the truth?

1 A. Yes.

2 Q. And that's all that has mattered?

3 A. Yes.

4 Q. Okay. And nobody has given you any words that you are
5 supposed to say; right?

6 A. No.

7 Q. No? And nobody's told you that good things will happen
8 if you say this or bad things will happen if you say that?

9 A. No, nobody.

10 Q. Just to tell the truth; right?

11 A. Yes.

12 Q. Okay. And every time you talked about Mr. Chandler's
13 classroom, have you done your absolute best to tell the
14 truth?

15 A. Yes.

16 Q. Okay. You never lied about anything?

17 A. No.

18 Q. No? Okay. Laurie, that's all the questions I have.
19 Thank you very much.

20 THE COURT: Thank you.

21 Recross, Mr. Madden?

22 MR. MADDEN: None, Your Honor.

23 THE COURT: Okay. Laurie, thank you very much.

24 You are done and you could step down and you're excused.

25 MS. FILO: Your Honor, may I have just two minutes?

26 THE COURT: Yes.

27 MS. FILO: Thank you.

28 THE COURT: Off the record.

1 (Whereupon, there was a discussion off the record.)
2 MS. FILO: Your Honor, at this time --
3 THE COURT: We'll go back on the record.
4 MS. FILO: At this time, the People would offer the
5 CIC statement or MBI statement of Laurie.
6 THE COURT: Okay.
7 MS. FILO: It will take me just a second to get it
8 fired up.
9 THE COURT: And this is both video and audio;
10 correct?
11 MS. FILO: I hope so.
12 THE COURT: Video and audio?
13 MS. FILO: I hope so.
14 THE COURT: Okay. We'll mark that as People's 5.
15 MS. FILO: I have transcripts for the jury.
16 THE COURT: And the transcripts will be marked as
17 5-A.
18 (Whereupon, People's Exhibits 5 and 5-A were marked
19 for identification.)
20 THE COURT: And I'm assuming there is a stipulation
21 that my court reporter not attempt to record the playing of
22 People's 5, the CD, Mr. Madden?
23 MR. MADDEN: Yes.
24 THE COURT: Ms. Filo?
25 MS. FILO: Yes.
26 THE COURT: Okay. Once again, ladies and
27 gentlemen, the transcripts are an aid. The evidence is the
28 CD, which will be played. And it's my understanding, I

1 believe that counsel's going to stipulate that the
2 transcripts will be introduced into evidence as well, so you
3 will have copies of that for your review and consideration
4 during deliberations.

5 (Whereupon, a tape was played, not reported.)

6 MS. FILO: Your Honor, for all practical purposes,
7 that's it.

8 THE COURT: Okay. Thank you.

9 MS. FILO: And, Your Honor, the risk of putting
10 everyone to sleep, I have another one. I have Becky's CIC
11 interview and corresponding transcript.

12 THE COURT: Okay. And, ladies and gentlemen, if
13 you'd pass your transcripts of Laurie's interview to your
14 right, Ms. Filo will collect them. And then we'll have the
15 CD of Becky's interview marked as People's 6, and the
16 transcript will be 6-A.

17 (Whereupon, People's Exhibits 6 and 6-A were marked
18 for identification.)

19 THE COURT: Ms. Filo, while we're passing them out,
20 do you have the transcript for the Court, 5-A, of Laurie's
21 that we could mark at this time?

22 MS. FILO: Yes.

23 THE COURT: And one for Becky, 6-A, if you have an
24 extra copy? Thank you.

25 (Whereupon, a tape was played, not reported.)

26 THE COURT: Ms. Filo, could you put it on pause for
27 a moment? You know how much longer we have?

28 MS. FILO: That's it, Your Honor. It's finished.

1 THE COURT: Okay. Thank you. We'll turn the
2 lights on. We're back on the record. People's 6, the
3 interview of Becky, has just completed playing. And at this
4 time, we'll take the noon recess.

5 I'll order all members of the jury to report to the
6 jury assembly room on the second floor at 1:30, and we'll
7 continue with the trial at 1:30. And I'll order both counsel
8 and Mr. Chandler to return to this courtroom at 1:15. And
9 thank you, ladies and gentlemen, for passing your transcripts
10 to your right, and you are excused. See you at 1:30.

11 (Whereupon, the Court took the noon recess.)
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2 THE COURT: We'll go on the record on the matter of
3 the People v. Chandler. Record will reflect both counsel are
4 present, Mr. Chandler is present, the jury is not present in
5 the courtroom at this time.

9	Ms. Filo.
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14 Mr. Madden in some of our motion in limines made
15 some reference to a statement made in the context of civil
16 litigation. That seemed to be in conflict with the
17 statements that had been made by the witness Laurie prior to
18 our motions in limine.

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1 So in order to avoid that production in front of
2 the jury, we did that informally. The Court actually ordered
3 Mr. Matiasic to provide the name of the professional to whom
4 Laurie gave these additional statements. So once that had
5 been done, I coordinated with Mr. Matiasic and with the
6 psychiatrist to whom these statements were made to have her
7 here in court today. And I guess I will leave that as the
8 state of the event thus far.

9 THE COURT: I think what you said is accurate, and
10 I believe that, yeah, I did make that order. And I think I
11 also indicated it -- eventually, based on what I was told, I
12 thought if that were the case, that the Court would have to
13 conduct an in-camera review. I was hoping to do it before
14 trial, so that if there was any disclosure, that we could at
15 least work with counsel and the witness to try to -- if the
16 witness was going to have to be called as a witness, try to
17 make it as convenient as possible for that particular person
18 as opposed to during the trial, where our flexibility will be
19 limited.

20 But everything you said is accurate. We were
21 provided with the name, we were provided with some records,
22 and the Court reviewed them in-camera. And based on that
23 review, I made a determination that portions of it were
24 relevant and I disclosed that to both counsel by way of a
25 redacted copy.

26 Mr. Madden, do you wish to supplement the record?

27 MR. MADDEN: I think both you and Ms. Filo have
28 accurately stated the history of this matter to date.

1 THE COURT: I know that, number one, calling the
2 doctor as a witness and also calling her without compensating
3 her for her fees to be here is a concern. And there is an
4 objection to having her called as a witness without being
5 paid, but I don't want to speak for counsel. And again, I
6 apologize because I didn't want to mispronounce your name.

7 MR. MATIASIC: That's okay, Your Honor. It's
8 Matiasic.

9 THE COURT: Thank you very much. I apologize. I
10 know you want to be heard and this is the time.

11 MR. MATIASIC: Great. Thank you, Your Honor. I
12 appreciate the opportunity to be heard. I agree with the
13 recitation of facts as recited by counsel previously, and
14 obviously I came down here on July 3rd; wherein, I voiced my
15 objection over disclosing both the name and the report. The
16 Court indicated what its ruling is going to be, and we
17 respect that.

18 I think now we're moving into a second phase in
19 terms of how this information is going to be utilized,
20 namely, having Dr. (Redacted) being called up on the stand as
21 a witness. We want to reiterate our objection; that we think
22 it's one thing to have her name and the information disclosed
23 to counsel here. It's another thing to entirely have her
24 take the stand, you know. We think this is violative of the
25 attorney/client privilege and work product, namely, my
26 work-product doctrine.

27 As I indicated before, this was not a doctor who
28 treated Laurie in the normal course of treatment. This is

1 someone with whom she saw at my behest. This was my
2 consultant. Someone that I chose based upon her specialty to
3 have Laurie see her. It was for purposes of evaluating the
4 factual underpinning what happened to Laurie so that Dr.
5 (Redacted) could communicate that to me.

6 So I think, you know, we like to have our ongoing
7 objection that this is violative attorney/client privilege
8 and my work-product doctrine. Also, I think Dr. (Redacted)
9 can't possibly be called as a percipient witness. She didn't
10 receive -- as indicated before, this is not a scenario where
11 she was walking on the street, saw some type of attack
12 happen, and called in to court as a percipient witness to
13 recall what happened. Everything she heard was in her
14 capacity as a consultant; it was in her capacity as a
15 psychiatrist, who was retained by an attorney, initially.

16 So she is an expert witness, and I think that
17 compels her to be paid her hourly fee associated with being
18 an expert witness. So, you know, as I indicated previously
19 in chambers, the defense raises issue. They are the ones
20 that wanted this information, wanted Dr. (Redacted) in today.
21 I think it were appropriate for the defense to pay her fee.
22 If not, the prosecution certainly has issued a subpoena as
23 well. Perhaps they should split a reasonable hourly fee as
24 determined by the Court, but Dr. (Redacted) should be paid.

25 If either the prosecution or the defense is not
26 willing to pay her hourly fee, you know, we request pursuant
27 to Evidence Code 730 that the Court order that she be paid an
28 expert witness fee in the amount of her normal hourly rate of

1 \$400 an hour.

2 THE COURT: I will hear from Mr. Madden or Ms.
3 Filo, if you wish to respond.

4 MR. MADDEN: I will be happy to.

5 THE COURT: Go ahead. Let me clarify something.
6 As I understand it, Ms. Filo, you subpoenaed her and you're
7 calling her as a witness in your case in chief?

8 MS. FILO: We did issue the subpoena, Your Honor.
9 And what I said to Mr. Madden before we went on the record,
10 I'm a little bit conflicted at this point because Laurie has
11 actually testified consistent with her MBI statement and her
12 statement to the police. I mean, actually what she's
13 testified to here is entirely consistent with what she has
14 already said. The only way that I think Dr. (Redacted)
15 testimony would be admissible, the only way that it would be
16 brought up at this point is really as a prior inconsistent
17 statement by the defense.

18 I don't think we -- the prosecution would have the
19 ability to pierce the work-product doctrine that Mr. Matiasic
20 has described. I think it's actually the defendant's
21 criminal due process rights that are going to be the highest
22 order of priority here. So I actually think it's really the
23 defense's interest in eliciting prior inconsistent statements
24 that would ultimately cause the Court to have disclosed or to
25 order this information disclosed. I mean, the reality is we
26 wouldn't have known about it had Mr. Madden not raised it,
27 argued it, and suggested it to the Court. I didn't know the
28 statement existed until Mr. Madden brought it up.

1 THE COURT: Okay. Thank you.

2 Mr. Madden.

3 MR. MADDEN: I'm not exactly sure where to begin.
4 This is indeed somewhat convoluted. However, I don't think
5 it's difficult to unwind. To begin with, my client's rights
6 in a criminal case to have access to any and all inconsistent
7 statements made by and any consistent statements made by a
8 complaining witness is paramount to any civil rights to these
9 obligations or privileges associated with Mr. Matiasic's
10 case, including his consultant/expert Dr. (Redacted). That
11 is clear.

12 She's not being -- first of all, I have not
13 subpoenaed her. Ms. Filo did that. And I'm sensing here
14 she's having some misgiving about that. Had she not
15 subpoenaed Dr. (Redacted), I would have. She indicated --
16 she indicated she was going to call her as her witness. I'm
17 certainly -- that is not her position. Dr. (Redacted) is
18 here, and I'm comfortable with the fact she's here and she's
19 subjected to questioning by certainly me and Ms. Filo,
20 assuming Ms. Filo wants to question her.

21 She's not a percipient witness in the sense of
22 viewing any of these molestations; that's obvious. Certainly
23 obvious to the Court, since the Court did an in-camera review
24 of her evaluation and is only allowing us to see those
25 relevant parts. And that has nothing to do with her opinion
26 about the effect of any of these events on Laurie, which, as
27 I understand it, is basically her role with Mr. Matiasic.
28 She basically has been retained to provide him or to help him

1 prove money damages in the underlying civil case against the
2 school district and Mr. Chandler.

3 Since she's just been -- so the percipient witness
4 is, she was the recipient of a statement from Laurie that I
5 absolutely disagree with Ms. Filo concerning categorizing
6 this witness as being consistent. It is clear from this
7 report that Laurie gave -- it appears that she gave Dr.
8 (Redacted) several statements that are inconsistent with all
9 the statements she's previously given, specifically she's
10 clearly always stated through stages of this criminal
11 prosecution and investigation --

12 THE COURT: Excuse me. May I just cut you off for
13 a minute? There is no question that what the doctor has to
14 say is not relevant, in my mind. No question at all. Okay.

15 MR. MADDEN: What do you mean? About her opinions?

16 THE COURT: No. Not -- she's not being called as
17 as an expert, but basically there is no question what Laurie
18 told her is not relevant in this case. It is relevant.

19 MR. MADDEN: Yes.

20 THE COURT: Okay. I guess my specific comment to
21 counsel is to have a response to Mr. Matiasic -- I'm horrible
22 with names. I apologize.

23 MR. MATIASIC: That's fine. No problem.

24 THE COURT: I don't need anything more to address
25 about the privilege, but basically the issue I'm focusing on
26 is compensation, if any, should be ordered.

27 MR. MADDEN: Again, for purposes of determining
28 compensation, she actually -- that's the use -- that's the

1 true and correct use of the term "percipient witness." In
2 this case, percipient to the statement, not to the event.
3 She's being -- only going to be asked questions about what
4 Laurie told her.

5 THE COURT: But the statements she got, or
6 received, I should say, were primarily as a result and
7 because of her profession and her expertise.

8 MR. MADDEN: Yes.

9 THE COURT: But for that statement wouldn't have
10 occurred.

11 MR. MADDEN: That doesn't entitle her to
12 compensation as an expert in this case. It certainly
13 entitles -- she's certainly entitled to compensation in a
14 civil case, but not in this case. That's not true. She's
15 entitled to a witness fee, and I don't know what it is. It
16 used to be \$35. I haven't looked at it for a long time. I
17 know it's not a significant amount, but she's entitled to
18 that. I believe she's entitled to mileage also. That's what
19 she's entitled to as a subpoenaed witness.

20 I don't have to pay her for a couple of reasons:
21 One, I didn't subpoena her; and number two, even if I did,
22 this will be like having to pay a police officer to come in
23 and talk about an inconsistent statement she's given. It
24 doesn't trigger any right, any duty on my, or Mr. Chandler's
25 part, to pay for that.

26 THE COURT: Okay. First of all, I agree with a lot
27 of what counsel says, you know, she's clearly not a
28 percipient witness to any events. Basically, her role would

1 be to recount statements Laurie gave to her during the time
2 she met her in her office.

3 I think it would be fair to ask her was Laurie's
4 demeanor sad, articulate, cooperative, that type of thing you
5 would ask any lay person. I think that because of, as Ms.
6 Filo said, Mr. Chandler's due process rights, I believe that
7 I am in a position where I would have to compel the doctor to
8 testify. The fact that I don't get the sense Ms. Filo would
9 be calling her as a witness, but since she's here and has
10 taken the time driving here, I think it should occur this
11 afternoon.

12 What bothers me, as, doctor, you may appreciate,
13 everything I do in the courtroom has to be authorized by some
14 statute or case, and I can't make any orders without any
15 authorization. And I did spend some time looking at Evidence
16 Code 730 and I was giving some serious consideration ordering
17 the parties to compensate her for her time here. And I was
18 thinking that under all of the circumstances, what would be
19 fair would be to order each side to pay half of it.

20 I don't think I have the authority to do so, and
21 I'm disappointed about that because, as counsel said earlier
22 off the record, it creates a chilling effect where
23 professions like Dr. (Redacted) are not inclined to be
24 involved in therapy or consultations with potential victims
25 who also potentially have a criminal case pending. And I
26 think that's unfortunate, and I think unfortunately I don't
27 think I have any authority to do anything other than order
28 the basic witness fees pursuant to the Government Code, which

1 is I believe it's 68093.

2 I know this is frustrating, not only to Dr.
3 (Redacted) and counsel, but if there was any basis for me to
4 order fees, either from the defense or the prosecution or
5 both, I would do it. I simply do not have any authority and
6 I don't think that it would be appropriate for me to do so.
7 I apologize for that. I think it's unfortunate.

8 Doctor, you will be asked to testify, and I will
9 not allow the attorneys to even get close to asking you any
10 opinions as it relates to your profession. It will simply be
11 your recollection of what was said by Laurie and maybe her
12 demeanor during the time that you met with her.

13 Either counsel have any comments they like to make
14 as well? I know this is over your objection, Counsel, and
15 it's a continuing objection. And I know that you've spent a
16 lot of time looking at this, you've done everything you
17 possibly could to give me some basis to prevent this from
18 happening, and unfortunately there is simply -- as anything
19 that exists, I asked research to take a look at it as well
20 and they couldn't come up with anything that would give me
21 any authority to do anything.

22 Yes.

23 MR. MADDEN: Your Honor, I need one point of
24 clarification. I think I understand the Court's ruling. I
25 don't want to delve into the area that the Court will not
26 allow. I will ask you this. First of all, Ms. Filo rather
27 have me call her as a witness, I'm happy to do that.
28 Whatever you want to do.

1 I basically intend -- if she were my witness, I
2 will be treating it the same way. I want to establish a
3 context. I don't know yet, but I want to establish, you
4 know, when this evaluation took place, how long it lasted,
5 and then go through the report as to the points in the report
6 that you have provided to the Court -- I mean, to counsel.

7 THE COURT: I may have provided a lot more of the
8 report because I thought it was relevant, but I'm focusing on
9 Laurie's statements.

10 MR. MADDEN: I think they need to be put in some
11 context. I mean, bring in an expert, she's -- my
12 understanding, she's not seeing her for treatment. She only
13 saw her for one day and afternoon.

14 THE COURT: Right.

15 MR. MADDEN: That's all.

16 THE COURT: That's fine.

17 MR. MADDEN: That concerns the civil case in this
18 case. That has nothing to do with this particular case. It
19 has nothing to do with her ongoing therapy, if she has any.

20 THE COURT: Right.

21 MS. FILO: My only concern about that is this, and
22 I do think that Mr. Matiasic's conversations with the doctor
23 are clearly privileged. So I mean, even --

24 THE COURT: I agree.

25 MS. FILO: My concern --

26 MR. MADDEN: I will not be asking about that.

27 MS. FILO: -- you know, that she was hired by Mr.
28 Matiasic, who is the civil lawyer --

1 THE COURT: That's not relevant.

2 MR. MADDEN: All right.

3 THE COURT: No.

4 MR. MADDEN: You don't want me to get into that
5 area.

6 MS. FILO: She's a psychiatrist. She specializes
7 in X, Y, and Z. This is what she met with Laurie on this
8 date, and this is what Laurie told her. This is her
9 demeanor.

10 THE COURT: I don't think we need to go into her
11 qualifications. She's a psychiatrist, she's a doctor, I
12 think that is sufficient. All we're getting from her is the
13 statements that Laurie made and then her demeanor, at least
14 what I observed and stuff, and that's it.

15 MR. MADDEN: I think I should be allowed -- I have
16 no trouble with that, but I think I should be allowed to
17 identify what material she had. I'm not talking about
18 conversations with attorneys, but what documents she
19 reviewed.

20 THE COURT: I'm not going to allow that because all
21 I'm allowing that's relevant is Laurie's statements.

22 MR. MADDEN: All right.

23 THE COURT: I mean, those documents might be
24 relevant in her evaluation what have you. So, you know,
25 obviously the fact that you are asking to be able to go into
26 that is denied.

27 MR. MADDEN: Well, I'm anticipating -- it's my
28 expectation that she hasn't seen any of the discovery

1 documents in the criminal case yet, anything that we talked
2 about in this trial. It's my guess.

3 THE COURT: Okay.

4 MR. MADDEN: But she states opinions about events.
5 I don't mean opinions about therapy or damages, but she goes
6 into detail as to the specifics of the allegations. And
7 although I -- obviously, that's relevant and fair game for
8 me.

9 THE COURT: No. It's relevant to the civil case
10 because she's doing a report for them. All I'm saying, Mr.
11 Madden, what's relevant is Laurie's statements and her
12 demeanor. Her understanding of the case and what's going on
13 and why I'm evaluating, I allowed that in there because I
14 thought it gave some meaning to the statement and relevance.

15 MR. MADDEN: But I can't talk about it?

16 THE COURT: Right. This witness because she's not
17 being compensated is only for statements.

18 MR. MADDEN: Okay.

19 THE COURT: Okay. So that's clear. I hope I don't
20 get in a position where I have to interject my own objection.
21 I think in fairness to the doctor, those are my narrow
22 parameters.

23 MR. MADDEN: I understand the Court.

24 THE COURT: I would like to call the jury up
25 real soon because I know she has to get going.

26 MR. MATIASIC: Thank you for your discussion here.
27 As I understand the Court's ruling, since, you know, is only
28 going to be talking about specifically what was communicated

1 to Laurie, what her demeanor was like, nothing else. If
2 that's the case, I don't see the need to even have the
3 doctor's full name introduced. The reason I say that is,
4 obviously, it will be giving the civil lawyer, who has been
5 attending the trial on behalf of the school district, who is
6 getting a free peek, 2034 free peek.

7 THE COURT: Could I stop you right there?

8 MR. MATIASIC: Sure.

9 THE COURT: We all know who the name of the doctor
10 is. I will allow this, and I think this is fair. The
11 doctor, if she has no objection, we'll do doctor, so her last
12 name will be deleted from the record. I don't think that
13 harms Mr. Chandler's right to a fair trial at all, and it at
14 least assists you with your work product, your privilege, and
15 that's sort of privilege.

16 MR. MATIASIC: Except, Your Honor, the fact that
17 the lawyer for the school district is here and would get
18 access to her last name. I mean --

19 MS. FILO: I'm happy to call her doctor.

20 THE COURT: That's what I'm thinking.

21 MR. MATIASIC: That will be fine.

22 THE COURT: We'll treat her like some of the
23 alleged victims and refer to them as Doe, but it will be
24 Doctor -- I don't know.

25 DR. LYNN: Dr. Doe.

26 THE COURT: Whatever your first name is. I think
27 that's a fair compromise for everyone. I would like to get
28 the jury up right away so we could get going because I know

1 she has some time restraints.

2 (Whereupon, the Court recessed.)

3 THE COURT: Thank you, Ms. Filo.

4 MS. FILO: Yes, Your Honor. We could call the next
5 witness.

6 DR. LYNN DOE,

7 Being called as a witness on behalf of the People,
8 having been first duly sworn, was examined and testified as
9 follows:

10 THE COURT: Good afternoon, Doctor.

11 THE WITNESS: Good afternoon.

12 THE COURT: As you know, the lawyers are going to
13 be asking you some questions. I would ask you to please make
14 every effort to let them finish the answer and make every
15 effort to answer the question that is being asked. And for
16 the purposes of this trial and the record, you are in
17 agreement that we're going to refer to you by your first
18 name, which is?

19 THE WITNESS: Dr. Lynn is fine.

20 THE COURT: Lynn?

21 THE WITNESS: Yeah.

22 THE COURT: Dr. Lynn?

23 THE WITNESS: Yeah.

24 THE COURT: Ladies and gentlemen, the reason we're
25 referring to the witness as Dr. Lynn is unrelated to the
26 trial, what's going on here. And I'll order any prior
27 reference that may have occurred using the doctor's last name
28 be stricken.

1 Ms. Filo.

2 MS. FILO: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MS. FILO:

5 Q. Good afternoon, Doctor. Could you tell me whether or
6 not you have met a nine-year-old little girl named Laurie?

7 A. Um, related to this case, yes, I can. And I have met
8 her.

9 Q. And when did that meeting take place?

10 A. Um, the meeting took place on November 29th, 2012.

11 Q. Okay. Where did the meeting take place?

12 A. Um, I don't want to give too many circumstances.

13 THE COURT: Just your office.

14 THE WITNESS: My home office, which is a child
15 psychiatric evaluation office. I have two of them; one at a
16 well-known place where I work, and the other where I met with
17 Laurie, was in my home office, which has a garden and a
18 playroom and a lot of toys. And the room that I met with her
19 in is in the middle of a garden and is really very pleasant.

20 Q. Is it in the city of San Francisco?

21 A. Yes, it is.

22 Q. Doctor, how long was your meeting with Laurie?

23 A. Um, with Laurie and her family, so that's her two
24 parents, the entire meeting lasted maybe about three and a
25 half hours.

26 Q. Okay. Initially, how did you find Laurie in -- being
27 able to talk to you or opening up to you?

28 A. Well, she was pretty scared and with her family and in

1 my waiting room and didn't want to come in and kind of
2 gripping the couch which is there and holding on to a toy
3 that she had brought with her. I forget which particular toy
4 it was. And her parents -- then I suggested that her parents
5 and she and I, all of us, go in together and we sit on the
6 floor together and kind of talk a little bit together to make
7 her comfortable there. And that was so that she could see
8 her parents doing this, I could do this with her, and it
9 would set the stage for making it easier for her to talk with
10 me.

11 So we did that and we all sat on the floor together
12 for a while. I got a little bit of information about their
13 family. I don't have to disclose that here. And we talked a
14 little bit about various toys and things, and then Laurie
15 agreed that she would stay with me alone.

16 Q. Okay. Just getting her to talk about sort of easy
17 things or noncontroversial things to begin with?

18 A. That's right. I also disclosed myself. I teach a lot
19 about how to do this, and one of the things I've learned, I'm
20 much older now, but sitting on the floor and maybe disclosing
21 something that has been very difficult for me, talking about
22 when I was her age, what it was like. I think I told her
23 that my mother taught elementary school, which she did, and
24 what that was like for me, and some of the struggles, that
25 kind of thing. And you try to humanize yourself, connect
26 with the child, and really develop a rapport and make them
27 less scared about being there.

28 Q. She was actually able to let her parents then leave the

1 room and stay with you alone?

2 A. She was.

3 Q. Did you ask her about being a student in Craig
4 Chandler's classroom?

5 A. I did.

6 Q. Was there any reaction from Laurie when you mentioned
7 Mr. Chandler's name?

8 A. Yes.

9 Q. What was that reaction?

10 A. Um, she became pretty tearful, looked like -- kind of a
11 blank look came over her face, which in our business we might
12 say was somewhat disassociating, moving out of her body and
13 the place she was in at the present time. And then her hands
14 started shaking. And then I said again: Why don't we sit on
15 the floor. Why don't we go back to playing with other
16 things. I might have had her draw a picture of her family,
17 which I have with me, and she calmed down a little bit.

18 So then I started to talk to her a little bit more
19 about it and say that it's really tough to talk about these
20 things. And she nodded and she was crying. And it's
21 upsetting to even tell this story. I wasn't counting on
22 that. But she told me that she was alone in the room with
23 Mr. Chandler a number of times, approximately 10 she thinks.
24 I say greater than 5, less than 10, giving parameters, and
25 she said that one, you know. Then I say 10 to 20, and then
26 one to 5 to try to give choices for a kid. And she said she
27 was alone with him 5 times when he blindfolded her.

28 She was very upset during this period, and I know I

1 brought the redacted report, but I'm going to look just in my
2 own notes a little bit so I could get the best description of
3 this.

4 She said that during those times when she was
5 blindfolded, that something hard and gooey had come into her
6 mouth, something gooey had come into her mouth, and she had
7 been asked to touch something that was hard. And she was
8 very embarrassed about all of this. She did not want to tell
9 anybody about this ever again. And she had been able to talk
10 to a judge, some judge, I wonder if it was you, about this a
11 little bit. But she did not want to tell the police about
12 this. She did not want to tell anybody about this because
13 it's incredibly embarrassing and humiliating. She didn't use
14 the word "humiliating," but embarrassing to have this happen,
15 and she was crying through the whole thing.

16 Q. Doctor, did Laurie talk to you at all about what life
17 has been like for her since these things happened to her?
18 What life has been like for her on the school playground, for
19 instance?

20 A. Um, she told me that she hated school after this because
21 of a lot of different things. She was afraid to go back
22 there. I don't know if I could say this, but she's in a
23 different school now and she feels better about that. When I
24 saw her in November, she didn't even want to go back to the
25 school and say goodbye, not even for five minutes, you know.
26 So her parents had offered, as good parents do, you know,
27 thinking we'll take you by, you'll be able to work through
28 how you felt about this, and she didn't even want to do that.

1 So she felt very badly.

2 She has a sibling, I believe, who was in the
3 school. He's also suffered from hearing some of the stories,
4 and kids also would make fun of her, say bad things about
5 this. And she thought they could read her mind, but she
6 wasn't going to tell anybody these things, so she was going
7 to keep it inside of her, but she wondered why they were
8 calling her bad names.

9 Q. Did she talk to you at all about kids pointing at her,
10 teasing her and making fun of her that she had been raped or
11 anything like that?

12 A. She did. She said those things, yes.

13 Q. That the children -- and how did she feel about that?

14 A. She felt terrible about that. She didn't understand
15 what these sexual things were. She used the word "slut" with
16 me. Is she a slut? You know, that's a big word for a little
17 kid to know, but clearly she connects what happened with Mr.
18 Chandler with that word.

19 Q. And she was -- I want to make sure, she was clear with
20 you that she never wanted again to talk about what happened
21 in Mr. Chandler's classroom. This was not something she was
22 ever going to talk about?

23 A. That's correct.

24 Q. Did she tell you anything more about what happened to
25 her while she was blindfolded? You said that it was --

26 A. Yeah.

27 Q. -- hard and gooey?

28 A. Um, that she touched something that was hard. I asked

1 her -- at this point we were talking about it, and she knew
2 that this was a sexual part, or she was guessing this or
3 thinking this or worried about this, so we talked about that.
4 We didn't know what this hard thing was, but we talked about
5 that possibility. And then the sticky stuff in her mouth,
6 she had no idea what that was, really.

7 Q. Did she say anything about what Mr. Chandler did with
8 his thing when it was in her mouth?

9 A. Um, I got -- that was a lot of information for me to get
10 from a little kid, and she didn't say anything. I may have
11 asked her, but she's crying and it's hard to know -- you also
12 want to leave the interview open-ended so you don't put words
13 in her mouth. And, you know, again, I wanted to follow her
14 lead here.

15 Q. Okay. So you were very careful during this discussion
16 not to put words in her mouth and let the information come
17 from Laurie as opposed to the other way around?

18 A. That's correct.

19 Q. Did Laurie give you any idea as to why she thought she
20 was chosen by Mr. Chandler for this activity?

21 A. Yes, and this isn't unlike other girls that I've worked
22 with. She was a very good student who tried hard, and she
23 felt like she was chosen because she was always trying to be
24 good, be there and be available and do what he would say,
25 and, you know, she saw herself -- she didn't use the adult
26 word "compliant," but somebody who would go along with
27 things.

28 Q. Thank you, Doctor.

1 MS. FILO: I have nothing further, Your Honor.

2 THE COURT: Thank you.

3 Cross-examination?

4 MR. MADDEN: Thank you.

5 CROSS-EXAMINATION

6 BY MR. MADDEN:

7 Q. Doctor, my name is Brian Madden. I'm Mr. Chandler's
8 attorney. I would like to go through your report with you
9 because it's not totally clear to me what you're saying. So
10 let's start, if we may, with -- before we get to that. The
11 sum total of information that you have about Laurie's
12 allegations was arrived at during the afternoon that you met
13 with her on August [sic] the 29th at your office; correct?

14 A. That's correct.

15 Q. All right. You didn't review any documents or anything?

16 A. No documents. Nothing.

17 Q. All right. Let's start with -- I think it's the bottom
18 of page one, beginning with, "she reported to me."

19 A. Um, I think I have it. Yes.

20 Q. Okay.

21 A. But --

22 Q. So I'm going to -- "She reported to me that Mr. Chandler
23 had met with her in the classroom and blindfolded her. She
24 believed this happened at least one time, but may have
25 happened up to five times;" is that correct?

26 A. That's correct.

27 Q. So somewhere between one and five times?

28 A. That's correct.

1 Q. That she was blindfolded?

2 A. Um, yes. Yes and --

3 Q. Could we stay with the blindfolding?

4 A. Yes, the blindfolding. Yes, I may have written that
5 incorrectly. She was blindfolded five times. Yes, that's
6 correct.

7 Q. What is correct?

8 A. That between one and five times she was blindfolded.

9 Q. Well, between one and five times is not five times, is
10 it?

11 A. No, it's not.

12 Q. All right. So --

13 A. The reason why --

14 Q. Hang on. There is not a question in front of you right
15 now.

16 A. Okay.

17 Q. Thank you. Then in the next sentence you state: "She
18 reports there were a number of episodes" -- let me stop right
19 there. I take it, episodes is your word, not hers?

20 A. That's correct.

21 Q. It would be unusual for a girl her age to be using the
22 word "episode;" correct?

23 A. Some do, but yes.

24 Q. Yes, it would be unusual?

25 A. Yes.

26 Q. And, yes, she did not use that word?

27 A. That's correct.

28 Q. All right. Where she and Mr. Chandler were alone in the

1 classroom, and she listed those greater of five times,
2 possibly between five and ten times. Is that -- did I read
3 that correctly?

4 A. That's correct.

5 Q. Is this different than the times that she was
6 blindfolded?

7 A. That's correct. She was actually alone with him on
8 occasions when she wasn't blindfolded.

9 Q. Okay.

10 A. It was between the one and five times that she was
11 blindfolded. I have separate notes that document that there
12 were separate episodes that occurred. I did not -- this was
13 taken by the court, my reports, so you don't have all of my
14 notes.

15 Q. What was taken by the court?

16 A. Or my redacted report was made available to the report,
17 but I have separate notes regarding the activities that
18 occurred with Mr. Chandler.

19 Q. All right. We'll get to those in a minute.

20 Let's get back to the blindfolded episodes. If you
21 said it was between one and five times, that means it could
22 only have been once; correct?

23 A. Um --

24 Q. Could have been?

25 A. Um, no. It was actually a misconception of my
26 writing, because I have separate episodes listed on my notes,
27 which indicate that a number of things happened.

28 Q. Your misconception or my misconception?

1 A. My misconception on my notes.

2 Q. So your report is wrong?

3 A. There is one that could be misconstrued. What I'm
4 saying, I have separate writing that indicates that there
5 were four separate -- there were five separate episodes that
6 occurred around the touching.

7 Q. We're talking about around the blindfold right now?

8 A. We are talking about that, but it would indicate that
9 she had been blindfolded because her eyes were never open
10 through any of this, by her report, and it would indicate
11 that she was blindfolded closer to the five times than the
12 one time.

13 Q. But the report says one to five times?

14 A. It does, but I probably should have said directly
15 that -- put in the specifics regarding these other things,
16 and that it would have been clear that it was closer to the
17 five times.

18 Q. Didn't you --

19 A. The report does not contain everything, Mr. Madden.

20 Q. Didn't you feel that the number of times that she was
21 blindfolded was significant?

22 A. Um, I did. And that's how she answered the question;
23 that it was one to five times. So that's how I reported it
24 here, but then she described separate episodes where she had
25 been blindfolded by Mr. Chandler.

26 Q. All right. So let's get to the sentence -- the last
27 sentence on page one. She reports there were a number of
28 episodes where she and Mr. Chandler were alone in the

1 classroom, and she listed those at greater than five times,
2 possibly five to ten times?

3 A. That's correct.

4 Q. So these are times that she was alone with Mr. Chandler
5 in the classroom, but not blindfolded; correct?

6 A. That's correct.

7 Q. Is she alleging that any sexual episodes happened when
8 she wasn't blindfolded?

9 A. Um, no, she's not.

10 Q. So she told you that all of the sexual episodes happened
11 when she was blindfolded?

12 A. That's correct.

13 Q. And again, she never used the words "sexual episodes."
14 That's your conclusion; correct?

15 A. Well, it's your word.

16 Q. I think it's your word?

17 A. If you are taking the word out of there.

18 Q. I'm taking the word out of your report?

19 A. Okay. Sexual episodes is my word, yes.

20 Q. All right. She said that Mr. Chandler moved her hand
21 during the time, singular, that she was blindfolded and
22 touched things; is that correct?

23 A. Yes, that's correct.

24 Q. So she touched things while she was blindfolded between
25 one and five times with her hands?

26 A. From my separate notes, I know that there were two
27 episodes of the hard touching, the touching the hard thing,
28 and then two episodes of something sticky in her mouth.

1 Q. And those happened when she was blindfolded?

2 A. That's correct.

3 Q. She also said she was unsure about what has going on?

4 A. She did say that. And I think she was trying very hard
5 to show me that she wasn't a slut or involved in this sexual
6 behavior. I think she had a great deal more knowledge, as
7 children often do, than they show themselves to have. I
8 think it was very frightening to her.

9 Q. Would it be a safe assumption, that since you didn't
10 review any documents prior to this interview, that you
11 started with the assumption that she had been sexually
12 abused?

13 A. That was not my assumption, Mr. Madden.

14 Q. It was not?

15 A. No.

16 Q. Did you consider what you were doing here was an attempt
17 to determine in your own mind whether or not she had been
18 sexually abused?

19 A. I am asked to interview the child. I'm extremely good
20 at it. I have done it for more than 35 years and children
21 talk to me. They feel comfortable with me. And I was asked
22 to do that. And then I'm not allowed to tell -- I think I'm
23 capped on what I was then asked to do, but make
24 recommendations regarding treatment for her based on what had
25 happened to her. That's what I was asked to do.

26 Q. You're like a doctor, a medical doctor, which is what
27 you are, taking a history assuming what the person telling
28 you is correct. You don't challenge it; right?

1 A. Um, in many ways I look to see whether or not the child
2 is telling me the truth. So I've written quite a bit about
3 children -- veracity of children and sexual abuse complaints.
4 I think it's important to know that when children come
5 forward with sexual abuse complaints or stories, that they
6 will often retract them; that they will feel shy about
7 telling their story; that it's very scary for them. And
8 there is a whole range of other things I'm looking to make
9 the child comfortable, but I'm aware of these other issues
10 that go on.

11 In general, though, veracity of children, when they
12 put forward a complaint about sexual abuse is 97 percent in
13 most of the studies, so that tells you something about
14 children coming forward with complaints.

15 Q. So again, you assumed that she was sexually abused, even
16 though you considered no documents concerning the
17 investigation of this case, or prior courtroom testimony, any
18 inconsistent statements she's given, nothing?

19 A. Mr. Madden, that is not true.

20 Q. Miss --

21 A. I did not assume that. That's your assumption being put
22 on to me, and it's unfortunate -- let me finish. And I would
23 like you to call me doctor, not Miss, you know.

24 Q. I apologize.

25 A. But it's very important that children have somebody that
26 could listen to them. I did not know what I would find when
27 I met with this little girl.

28 Q. I understand that. Let's continue with your report, if

1 we may, with the next sentence. She said that something
2 were -- moved around in her mouth by Mr. Chandler. Okay.

3 Did she tell you that Mr. Chandler put things in
4 her mouth?

5 A. Something wet and sticky he put in her mouth.

6 Q. Anything else?

7 A. I think that's the only thing that she told me about.

8 Q. All right.

9 A. There was something hard there, too. She said that,
10 but, you know, whether or not that went into her mouth or
11 rubbed up against her mouth, I don't know. I would like to
12 say she was having a horrible time when she told me this.

13 Q. All right.

14 A. And was shaking the whole time. It was terrible.

15 Q. Could you tell me how much of the three and a half hours
16 was spent getting a history from Laurie concerning her
17 physical interaction with Mr. Chandler?

18 A. At least an hour, maybe more.

19 Q. All right. Had you been aware of any prior inconsistent
20 statements that Laurie had given to others in the course of
21 the criminal case that were inconsistent with what she told
22 you? Would you have asked her about it?

23 A. Um --

24 MS. FILO: Objection, Your Honor. Calls for
25 speculation and relevance.

26 MR. MADDEN: Part of her evaluation, Your Honor.

27 THE COURT: I'll allow the first part, if she was
28 aware of any prior inconsistent statements.

1 THE WITNESS: Um, I did not know that there were
2 inconsistent statements. Maybe I should say that expressed
3 or whether or not there were. I might have asked if I had
4 suspected that, but I would try to ask in a way that would
5 keep it open for the child, you know, frame it in such a way.
6 I wouldn't say: You made prior inconsistent statements, but
7 maybe try to get her to talk a little bit about the first
8 time or second time she talked about this.

9 I think I say here in my report she felt like she
10 was able to tell a little bit to the judge. That's the one
11 bit I did get out of her about that, because she told me that
12 she testified during a court situation. Of course with kids,
13 even going to a policeman or doing a police interview could
14 be a court situation, and she thought she had told some of
15 her story then. But she knew -- she told me she had never
16 told as much of her story as she told me.

17 BY MR. MADDEN:

18 Q. Oh, okay. So, Doctor, it was your understanding that
19 you were getting a much greater and much fuller story than
20 she ever told anyone?

21 A. I didn't -- I don't know. I know that this is a story
22 she told me, and this is the one I'm relating to you. I
23 don't know about her prior histories of disclosure, even at
24 this point.

25 Q. Okay. Now, you are not seeing her? You've only seen
26 her one time; right?

27 A. That's correct.

28 Q. You talked about -- all the allegations you talked about

1 were within an hour approximately of the time you spent with
2 her?

3 A. I think I took a break. We took a break to have some
4 drinks, like orange juice and stuff, and then came back in.
5 And I think the full time -- the hard part was about an hour,
6 and then there was an additional half hour where we talked a
7 little bit, went back and talked about the school and other
8 things related to what I've written in the report earlier.

9 Q. All right. And you're not seeing her in therapy?

10 A. I'm not.

11 Q. So if you had been made aware that previous to
12 speaking -- previously to speaking with her, she consistently
13 and repeatedly said Mr. Chandler never put anything in her
14 mouth, would you have pursued that?

15 A. Um, I think you asked me a variant of that earlier, Mr.
16 Madden, and I would try not to put words in a kid's mouth.
17 But I might have asked what happened during an earlier time
18 and if she remembered that. Often kids are very anxious when
19 they are talking about this and you don't want them to
20 confuse, you know, and report a lot of different tellings at
21 the same time, so you try to get the story.

22 Q. Had you been aware of it, you would have explored it;
23 correct?

24 A. I might have. As I said, depending upon her clinical
25 state.

26 Q. All right. Had you been aware of that previously she
27 never said she touched anything with her hands, would you
28 have explored that?

1 A. Same response as to the other. It would depend upon her
2 state at that time, but I would have asked, yes.

3 Q. And apparently, because it's not in your report, she
4 never mentioned to you that Mr. Chandler put any objects on
5 her feet?

6 A. I don't remember anything related to that.

7 Q. Take your time. Go through your notes.

8 A. Yeah, I don't remember any mention of feet. No, but she
9 may have been talking about her feet. You know, one thought
10 I have, she may have started off talking about her feet, and
11 then when she started to cry and shake and talk about the
12 other stuff, that dropped away. So I don't know of anything
13 about a feet part.

14 Q. And there is nothing in your notes that mentions the
15 word "feet;" correct?

16 A. Nothing that I could see, no. But I didn't write
17 everything down because I'm trying hard to listen.

18 Q. All right. Just let me check my notes, Doctor. I think
19 I may be done.

20 I am. Thank you very much.

21 A. Thank you.

22 THE COURT: Ms. Filo?

23 MS. FILO: Very briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY MS. FILO:

26 Q. Doctor, you said that you may or may not have explored
27 prior disclosures or inconsistencies in your conversation
28 with Laurie; is that accurate?

1 A. Yes. I remembered that I had talked with her about -- I
2 wrote in my report that she had talked to the judge, and I
3 remember her saying that she talked to the judge. She tried
4 to talk to the judge she said, but that it was hard for her.
5 So I didn't -- I didn't go back into: What was your story
6 with the judge? How does this compare with mine? That kind
7 of thing. I didn't do that.

8 Q. Okay. So would one factor for you in deciding whether
9 or not you're going to explore previous disclosures be
10 whether you believe you're getting information from the child
11 then at the time of this conversation?

12 A. Um, yes. At this point, you know, I worked a lot with
13 judging a child's veracity. I had no reason to doubt this
14 story. This is a girl who does not want to disclose this
15 type of behavior because she's very afraid of how other
16 people will see her, as a sexual person, a little sexual
17 person, and as a person. So I had no reason to doubt her.
18 And she was fragile when she left the interview. I wanted
19 her to, you know, have time with her family and feel better.

20 I think there have been times when there have been
21 dramatically different stories. That wasn't what I was asked
22 to evaluate in this case. Then I would have the child come
23 back, and then I might -- we might make a sticker chart and
24 kind of work out the different times, draw pictures so that
25 we would have the different stories on different pages and
26 try to figure out in a kid way what the different stories
27 were.

28 Q. Okay. So there is nothing about the fact that a child

1 has failed to disclose in the past that necessarily makes you
2 think that that child is being dishonest with you at that
3 time?

4 A. Nothing.

5 Q. In fact, that's common?

6 A. That's common because disclosure is a gradual process
7 with sexual abuse, and it takes a long time. It takes boys
8 even longer than girls to disclose. It's fortunate sometimes
9 that kids are brave and they do disclose.

10 Q. One last question. Doctor, you seemed to get a little
11 bit emotional when you were talking about Laurie. You've
12 told us that you taught in this area, that you been doing
13 this for a long time. What is it about this conversation
14 with this little girl that caused that reaction in you?

15 A. I think because when you work with children, you have to
16 try to put yourself in their shoes, in their minds, in their
17 bodies when they are going through this. I think that's what
18 leads to the disclosure, is actually that ability to try to
19 put yourself in their bodies. And I think because of that, I
20 carry a lot of the feelings, you know, with -- that she
21 transferred to me after this disclosure. So I carried them
22 with me and I have a lot of emotion that goes with it.

23 I'm also a person. I'm a mom of many kids and love
24 children who tries to get close to children. So I'm an
25 emotional person. But you're right, it's not often that I
26 feel emotional on the witness stand. That's not usual.

27 Q. Thank you, Doctor.

28 MS. FILO: No further questions.

1 THE COURT: Recross?

2 MR. MADDEN: Nothing, Your Honor.

3 THE COURT: Thank you, Doctor. You may step down.
4 I appreciate your cooperation.

5 Ms. Filo, who do you have scheduled next?

6 MS. FILO: Mary Montgomery.

7 THE COURT: Okay.

8 MARY MONTGOMERY,

9 Being called as a witness on behalf of the People,
10 having been first duly sworn, was examined and testified as
11 follows:

12 THE CLERK: For the record, ma'am, could you please
13 state your first and last name and spell both for the record.

14 THE WITNESS: Mary Montgomery. M-a-r-y,
15 M-o-n-t-g-o-m-e-r-y.

16 THE COURT: Thank you, ma'am. As you know, the
17 lawyers are going to be asking you some questions. I would
18 ask you to make every effort to let them finish the question
19 before you begin your answer. Listen to the question
20 carefully and only answer the question that is being asked.
21 If the question calls for a yes or no response, we need
22 verbal yes or no as opposed to head shake or uh-huh or
23 nah-uh. If you hear objection, please don't answer the
24 question. I will rule. If I overrule the objection, you are
25 allowed to answer. If I sustain, they will ask you another
26 question.

27 You could put that microphone anywhere you want.

28 You could adjust it if you feel comfortable. You could pull

1 the chair up if you like as well. Thank you.

2 Direct examination.

3 MS. FILO: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MS. FILO:

6 Q. Good afternoon, Ms. Montgomery. Are you an elementary
7 school teacher?

8 A. I'm a retired elementary school teacher.

9 Q. Did you recently retire?

10 A. I retired June of 2012.

11 Q. Congratulations.

12 A. Thank you.

13 Q. How many years were you a teacher?

14 A. I was a teacher at O.B. Whaley School for 15 and a half
15 years.

16 Q. Do you know what classroom you were assigned to in the
17 2011/2012 school year?

18 A. Room 19.

19 Q. And that was immediately next door to room 18?

20 A. Yes.

21 Q. And was Craig Chandler the assigned teacher to room 18?

22 A. Yes.

23 Q. Ms. Montgomery, I want to ask you about an incident that
24 occurred, that I think it was during that school year, where
25 you heard something that caught your attention. Could you
26 tell me -- could you tell me about that incident?

27 A. Um, I heard a knock on the door. It sounded like it was
28 on Mr. Chandler's door.

1 Q. Okay. Was it a -- what time of day was it?

2 A. It was after second lunch, so I would say had to be
3 sometime after 12:45. Maybe somewhere between 12:45 and 1:00
4 o'clock.

5 Q. Okay. You said that was after second lunch?

6 A. Correct.

7 Q. Did everyone -- all of the students at this school have
8 a designated lunch period?

9 A. Yes.

10 Q. They were either in first lunch or second lunch?

11 A. Or third lunch.

12 Q. Or third lunch. Okay.

13 And during the lunchtime, where were the students
14 allowed to be?

15 A. Well, they were in the cafeteria. From the cafeteria,
16 they would go out onto the playground. Then after the
17 playground, the teacher would pick them up and take them back
18 to the classroom.

19 Q. So the teacher got a break -- during the time that their
20 students had lunch, the teacher got a break too; is that
21 right?

22 A. Yes, that's when we had our lunch break.

23 Q. Okay. And was someone else assigned to sort of monitor
24 the kids while teachers had lunch?

25 A. Yes, on the playground.

26 Q. Okay. When you heard this knocking at the door, were
27 your students in session?

28 A. Yes.

1 Q. And what about Mr. Chandler's students? Were they in
2 session or were they on their lunch break?

3 A. No. They were in session again.

4 Q. Okay. And you said that you heard a knock. What kind
5 of knock was it?

6 A. Well, I mean it was a knock on the door. I mean, it was
7 not enough that I could hear it. It wasn't -- it was loud
8 enough that I could hear it.

9 Q. Okay. Did the knocking become incessant at some point?
10 Loud?

11 A. Well, I mean it got a little bit louder, yes.

12 Q. Did you -- did it get to the point where you actually
13 went to your door to figure out what was going on?

14 A. It got my attention, yes, to go to the door.

15 Q. Okay. What did you see when you got to your door?

16 A. I saw Mr. Chandler's students outside in the area behind
17 the classrooms.

18 Q. Okay. So his students were just out and about behind
19 the classroom; is that right?

20 A. Um, well, they were in the area behind our two
21 classrooms.

22 Q. Okay. So I want to be clear, your classroom, classroom
23 19, was at the back of the school; is that right?

24 A. Yes, toward the back wall.

25 Q. And just 20 feet beyond your classroom door and Mr.
26 Chandler's classroom door, there is a fence that actually
27 goes to the neighborhood; right?

28 A. That's correct.

- 1 Q. Okay. So were Mr. Chandler's students in that area
2 between the sort of neighborhood fence and the wall with the
3 doors to the classrooms?
- 4 A. Yes.
- 5 Q. Okay. You said that a student was knocking on the door.
6 You recognized the student?
- 7 A. Yes, I did.
- 8 Q. That student had been a previous student of yours?
- 9 A. That's correct.
- 10 Q. Did you ask him: What are you doing?
- 11 A. I asked him where was Mr. Chandler.
- 12 Q. Okay. What did he say?
- 13 A. He said he's in the room.
- 14 Q. And did you ask him: Why can't you go in, or why don't
15 you go in?
- 16 A. Well, I asked him was the door stuck.
- 17 Q. And what did he say to you?
- 18 A. Well, he pushed down on the door handle.
- 19 Q. And you could see that no movement was happening?
- 20 A. Correct.
- 21 Q. It was locked?
- 22 A. Yes.
- 23 Q. Okay. And at some point, did you then see the door
24 open?
- 25 A. Yes, Mr. Chandler came out of the door.
- 26 Q. Okay. You saw Mr. Chandler actually open that door?
- 27 A. Yes, he opened it from the inside and walked out.
- 28 Q. Okay. Did he -- you didn't see anyone else walk out of

1 the room?

2 A. No. He was by himself.

3 Q. Okay. And did -- what happened with the students when
4 Mr. Chandler walked out?

5 A. Well, they were standing waiting for him. They knew
6 where he was.

7 Q. They were waiting to come back into the classroom?

8 A. Um, I'm not sure if they waited to come back in, or they
9 were waiting for him to come out and join them. I'm not
10 totally sure.

11 Q. Okay. But they were outside the classroom while he was
12 in the classroom with the door locked?

13 A. That's correct.

14 Q. All right. You didn't notice if any of the students
15 were missing, did you?

16 A. No. There were a lot of kids, no.

17 Q. Okay. Thank you, Ms. Montgomery. That's all I have.
18 One more question. Do you know when this happened?

19 A. No. I just know it was sometime between when school
20 started in the fall and sometime, you know, at the end of
21 December.

22 Q. All right.

23 A. Yeah.

24 Q. Sometime in that first semester we would call it?

25 A. Right.

26 Q. Thank you.

27 MS. FILO: Nothing further, Your Honor.

28 THE COURT: Thank you.

1 Cross, Mr. Madden?

2 MR. MADDEN: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. MADDEN:

5 Q. Ms. Montgomery, my name is Brian Madden. I'm Mr.
6 Chandler's attorney. So you were at O.B. Whaley since 1996?

7 A. Correct.

8 Q. That was a good guess. And do you have a recollection
9 of when Mr. Chandler began teaching at O.B. Whaley?

10 A. I want to say maybe five years after I was hired.

11 Q. Sometime after 2001, 2002, 2003, something like that?

12 A. Possibly.

13 Q. Okay. And you were in room 19, if you remember, for how
14 long prior to --

15 A. The -- oh, gosh. I was in that room for exactly 15
16 years.

17 Q. All right. You must have liked it?

18 A. They didn't move me out, so I guess they liked me in
19 there.

20 Q. All right. So room 18 was occupied by Mr. Chandler for
21 some period of time also prior to 2012; correct?

22 A. Correct.

23 Q. You've been there for -- I won't hold you to it -- if
24 you could give me an estimate how long he had been in room
25 18?

26 A. I would think it was more than five years.

27 Q. Okay.

28 A. Yes.

1 Q. And so your rooms were adjoining? You shared a front
2 wall; would that be right?

3 A. Correct.

4 Q. You said "correct," but I think I'm wrong. The front
5 wall of his classroom would have been the back wall of yours?

6 A. Um, repeat that, please.

7 Q. I think I gave you another bad question.

8 A. Okay.

9 Q. Let me see if I could improve on that by going to a
10 photograph.

11 MR. MADDEN: May I approach, Your Honor?

12 THE COURT: Yes. Thank you.

13 BY MR. MADDEN:

14 Q. If you take a look -- we could probably use the
15 photographs that are visible to everybody right now, and one
16 is Defense Exhibit A-1, which has previously been represented
17 as the back of Mr. Chandler's classroom. Okay?

18 A. Yes.

19 Q. And then there is a door here that has been represented
20 as going to another classroom?

21 A. Yes.

22 Q. Is that right?

23 A. That's correct.

24 Q. All right. And with respect to the door between this
25 classroom -- we're concerned with the doors between
26 classroom. Was there a door between Mr. Chandler's classroom
27 and your classroom?

28 A. No.

1 Q. Okay. How about room 19? Did you also have a door that
2 went into an adjacent classroom?

3 A. Yes.

4 Q. Okay. Do you remember who the teacher would have been
5 on the other side of that door?

6 A. Yes, Ms. D'Arcy.

7 Q. D'Arcy?

8 A. Yes.

9 Q. Do you know who the teacher would have been on the other
10 side of Mr. Chandler's door?

11 A. Yes.

12 Q. Who would that have been?

13 A. Mrs. Catangay.

14 Q. Catangay?

15 A. Yes, Catangay.

16 Q. Okay. This also -- this door is also depicted in A-2,
17 and I'm pointing to the door here. The door between your
18 classroom and the next classroom, Ms. D'Arcy's classroom,
19 that doorknob, does it have a lock on it at all?

20 A. No.

21 Q. All right. And Mr. Chandler's door didn't have a lock
22 on it either; right?

23 A. That's correct.

24 Q. All right. How about your classroom? You had windows
25 in your classroom?

26 A. At the top.

27 Q. Okay.

28 A. Yes, windows at the top.

1 Q. I'm going to have you take a look at the photograph A-1.
2 There appears to be a window at the top of the back of Mr.
3 Chandler's wall. Was your classroom identical?

4 A. Exactly.

5 Q. So the area below the top of the windows looks like it
6 must have been painted over perhaps years ago?

7 A. Yes.

8 Q. All right. The four classrooms: Mr. Chandler, yours,
9 Ms. Catangay, and Ms. D'Arcy, those were four rooms within
10 one building; right?

11 A. Correct.

12 Q. Okay. They are all essentially the same size?

13 A. Correct.

14 Q. 1/4 of a square?

15 A. Correct.

16 Q. All right. Okay. I think that's -- as I look at
17 Defense Exhibit A-13, this has previously been described as a
18 white board at the front of Mr. Chandler's classroom and this
19 would be the wall that he shares with your classroom?

20 A. Correct.

21 Q. Okay. I got it.

22 Did you have a good relationship with Craig
23 Chandler?

24 MS. FILO: Objection, Your Honor. Relevance.

25 THE WITNESS: Yes.

26 THE COURT: I'll allow the answer to remain.

27 MR. MADDEN: That's preliminary, Your Honor. Thank
28 you.

1 THE COURT: I'll allow the answer to remain.

2 BY MR. MADDEN:

3 Q. Did you answer the question?

4 THE COURT: She said "yes."

5 MR. MADDEN: Thank you.

6 BY MR. MADDEN:

7 Q. You and Mr. Chandler were friends?

8 A. We were professional friends.

9 Q. Yes. I don't mean social friends, but you were friendly
10 with each other?

11 A. Yes.

12 Q. Okay. For years, you worked adjacent to each other;
13 correct?

14 A. Next door to each other.

15 Q. I'm sorry. Next door to each other?

16 A. Yes.

17 Q. And was it common for Mr. Chandler -- strike that.

18 Was it unusual for Mr. Chandler to occasionally
19 have his students playing outside of his classroom?

20 A. Could you repeat that, please?

21 Q. Yes. Was it unusual for Mr. Chandler to have his kids
22 playing outside of his classroom?

23 A. No.

24 Q. That was something he commonly did?

25 A. He did it often.

26 Q. Okay. And are you familiar with Mr. Chandler's
27 schedule? What he did on Fridays, for example?

28 A. No.

1 Q. Okay. I didn't -- I don't think we heard -- what grade
2 did you teach during the time Mr. Chandler was there?

3 A. I taught second grade for, oh, eight years, and then I
4 taught -- no for ten years, and then I taught first grade for
5 five years.

6 Q. Okay. So the student that you were talking about that
7 you recognized was a former student of yours, who either was
8 a second- or a third-grader in Mr. Chandler's class?

9 A. That's correct.

10 Q. You know the name of the child?

11 A. Yes, I do.

12 Q. Who is that?

13 A. His name is Chris.

14 Q. Chris?

15 A. Yes.

16 Q. Okay. And so where were you when you first noticed the
17 sound of knocking?

18 A. I was in my classroom.

19 Q. Okay. Was your door open or closed?

20 A. It was closed.

21 Q. Okay. And you think it was mid-afternoon?

22 A. Yes.

23 Q. All right. But you really have no memory as to what
24 point in the school year it was, from the beginning of the
25 school, which is typically in mid-August, to Christmastime;
26 right?

27 A. No, I don't have any recollection.

28 Q. Okay. Did you -- let me withdraw that question.

1 Was Chris in any way upset when you observed him at
2 the room 18 door?

3 A. No.

4 Q. Were there children around him?

5 A. There was some children standing in the background, yes.

6 Q. All right. They were basically just doing what kids do?
7 Playing?

8 A. Um, most of them were not playing. They were just sort
9 of standing, waiting, and a couple of kids were like, you
10 know, handling a ball. But they weren't -- there was not a
11 lot of activity. No.

12 Q. Was it the whole class or just a group smaller than the
13 whole class?

14 A. No. It appeared to be the whole class.

15 Q. Okay. Did they appear to be lined up? You said they
16 appeared to be waiting for Mr. Chandler?

17 A. Yes.

18 Q. Okay. And so you had walked out of your door; correct?

19 A. Yes.

20 Q. And then you walked down, and how close did you get to
21 Mr. Chandler's door?

22 A. I did not walk out of my classroom. I mean, I opened my
23 door, but I stood in the threshold.

24 Q. Okay.

25 A. So that I could watch my class, too.

26 Q. So you could watch your class. And then you saw Chris
27 down at the door with the other kids apparently waiting for
28 Mr. Chandler; right?

1 A. Yes, they were standing in the background.

2 Q. Okay. So when I hear you use the word "standing," when
3 I think of kids at that age, I don't associate kids that age
4 as standing around. I think of constant movement. So my
5 question is, were they lined up at all?

6 A. No, they weren't lined up. They had some balls with
7 them, but it looked like they were possibly out there getting
8 ready to, you know, play or do something of that sort.

9 Q. Maybe go someplace with Mr. Chandler? To PE or
10 something?

11 MS. FILO: Objection, Your Honor.

12 THE WITNESS: Or maybe he'd have it right there.
13 They often played in that little section.

14 BY MR. MADDEN:

15 Q. Did the PE right there in the section where they were?

16 A. Correct.

17 Q. Okay. So it looked like they were waiting for Mr.
18 Chandler to join them? They had toys or balls that you
19 associate with PE?

20 MS. FILO: Objection, Your Honor. Calls for
21 speculation.

22 THE COURT: Sustained.

23 BY MR. MADDEN:

24 Q. You saw balls; correct?

25 A. Correct.

26 Q. I may have said toys too soon. Were there any other
27 toys that you remember?

28 A. No, no.

1 Q. Okay. And so Chris -- you were from your threshold.

2 Did you have a conversation with Chris?

3 A. I just asked him a few questions.

4 Q. You have a nice, soft voice. Were you yelling at him or
5 just talking?

6 A. No. He was close enough that he could understand me
7 without me screaming because the doors -- the space between
8 the doors is not very long.

9 Q. How long would you estimate that distance to be?
10 Greater or lesser than the distance between you and me right
11 now?

12 A. I would say possibly the same distance.

13 MR. MADDEN: You have a survey, Your Honor?

14 THE COURT: From the witness stand to the railing
15 is 28 feet.

16 BY MR. MADDEN:

17 Q. So 20, 25 feet, something like that? About the distance
18 between me and you?

19 A. I would say so.

20 Q. Okay. And again, he wasn't upset?

21 A. No.

22 Q. And you saw him push down on the door?

23 A. Yes.

24 Q. And shortly after that it opened; correct?

25 A. Correct.

26 Q. Mr. Chandler came out?

27 A. Correct.

28 Q. He was alone?

1 A. He was alone.

2 Q. There was no one else in the classroom?

3 A. I didn't go to the classroom.

4 Q. All right. So you don't know if he was alone or not?

5 A. When I saw him he was alone.

6 Q. I understand that. You don't know if there was anyone
7 else in the classroom with Mr. Chandler is what I'm trying to
8 say?

9 A. I didn't walk up to the classroom.

10 Q. Okay. I understand. After this event, did you -- were
11 you in any way, shape, or form upset?

12 A. No.

13 Q. Why not?

14 A. There was nothing about it that made me feel
15 uncomfortable.

16 Q. Okay. So I'm assuming, since you weren't uncomfortable,
17 you never had a discussion with Craig about that event after
18 the event?

19 A. You mean at that time -- at that moment in time or
20 later?

21 Q. Either that time or anytime after? The next day or the
22 next week or anything like that?

23 A. No. We didn't actually discuss the event, no.

24 Q. That would be logical since you weren't in any way
25 concerned about it; correct?

26 A. No. I wasn't concerned about it.

27 Q. Okay. Thank you.

28 MR. MADDEN: I have no further questions.

1 THE COURT: Redirect?

2 MS. FILO: I have one question.

3 REDIRECT EXAMINATION

4 BY MS. FILO:

5 Q. Ms. Montgomery, were children to be outside without
6 supervision?

7 A. They should have had supervision.

8 Q. So this particular incident was notable to you because
9 the kids were outside -- second- and third-graders were
10 outside with no supervision?

11 A. He was not with them.

12 Q. Thank you.

13 MS. FILO: Nothing further.

14 THE COURT: Recross?

15 MR. MADDEN: I had a couple of questions. Thank
16 you, Your Honor.

17 RECROSS-EXAMINATION

18 BY MR. MADDEN:

19 Q. With respect to the windows, were the windows -- the
20 whole building configured? That is, every two classrooms --
21 Ms. D'Arcy and Ms. Catangay, were those windows identical to
22 the windows in yours and Mr. Chandler's classroom?

23 A. Correct.

24 Q. They were painted the same way?

25 A. The bottom windows? Are you referring to the bottom?

26 Q. Yes. I'm sorry, yes.

27 A. They are actually boarded. There is no plate glass
28 there.

1 Q. There is actually wood there?

2 A. That's correct.

3 Q. All right. As you look, for example, at the
4 photograph -- excuse me -- on the easel, I think it's been
5 pointed out that there appears to be two handles that must
6 have been an open window at sometime; right?

7 A. You could still open it and get air.

8 Q. Oh, you could?

9 A. Yes, but there is no plate glass there.

10 Q. So it still opens up, but it's really a piece of wood
11 covering the window that you will be opening up?

12 A. Correct.

13 Q. Okay. Was that done at sometime after you were a
14 teacher at O.B. Whaley or before you got there?

15 A. Before.

16 Q. Okay. Thank you.

17 MR. MADDEN: I have no further questions.

18 THE COURT: Ms. Filo?

19 MS. FILO: Nothing further, Your Honor.

20 THE COURT: This is not real important, but I was
21 just curious. How does the window open? Does it slide up?

22 THE WITNESS: There is a handle that you pull down
23 and you pull it in towards you.

24 THE COURT: Window's pulled in?

25 THE WITNESS: Correct.

26 THE COURT: So from the top it comes up like that?

27 THE WITNESS: Well, it --

28 THE COURT: It opens from the bottom?

1 THE WITNESS: I could show you with a tissue box.

2 THE COURT: No. Apparently, I was just curious.

3 I'm sorry, Counsel. If you want to follow up on
4 it, fine. I was just -- there was testimony of a window. I
5 was curious if the windows open in different ways. So I'm
6 sorry. I satisfied my own curiosity. Counsel wish to follow
7 up?

8 MS. FILO: No, Your Honor.

9 THE COURT: Sorry, Ms. Montgomery. You could show
10 me at the break, because we're going to take a recess right
11 now, ladies and gentlemen.

12 MS. FILO: Your Honor, before you excuse the jury,
13 could we approach very briefly?

14 THE COURT: Is Ms. Montgomery free to leave?

15 MS. FILO: Yes.

16 THE COURT: Thank you, ma'am. You are excused and
17 free to leave.

18 (Whereupon, there was a discussion at the bench.)

19 THE COURT: Ladies and gentlemen, we're going to
20 take the recess right now, and the reason is because we did
21 start earlier, before 1:30, before you came up to the
22 courtroom because I had to address other issues. And the
23 reason I'm telling you this and the need for break is because
24 the next witness will be relatively short. And after we're
25 done with that witness, we'll be recessing for the afternoon.

26 So I didn't want any of you to think, well, we take
27 a recess, we come back, why didn't we just finish up because
28 it wasn't that long? But it's real important that I give my

1 staff a break. Every witness is a little different. Right
2 now I think it's very important to give my court reporter a
3 break. What she does is, I think, very, very difficult. So
4 just by way of explanation, we'll call you back up in 15
5 minutes, 3:15.

6 (Whereupon, a brief recess was taken.)

7 THE COURT: Record will reflect all members of the
8 jury are present in the courtroom, both counsel are present,
9 Mr. Chandler is present in the courtroom.

10 Ms. Filo, your next witness.

11 MS. FILO: Thank you, Your Honor. The People call
12 Armando Lara.

13 ARMANDO LARA,

14 Being called as a witness on behalf of the People,
15 having been first duly sworn, was examined and testified as
16 follows:

17 THE CLERK: For the record, sir, could you please
18 state your full name and spell both for the record.

19 THE WITNESS: Armando Lara; A-r-m-a-n-d-o, L-a-r-a.

20 THE COURT: Thank you, sir. The lawyers are going
21 to be asking you questions. It's important that you let them
22 finish their question before you begin your answer. I would
23 ask you to please make every effort to listen to the question
24 and only answer what is being asked. If the questions call
25 for a yes or no response, you need to verbally say yes or no
26 as opposed to shaking your head up and down. If you hear a
27 lawyer say objection, don't answer the question. I will rule
28 and let you know if you could answer it or not. Okay?

1 You could scoot your chair up if you like and
2 adjust the microphone if you wish.

3 Direct examination.

4 MS. FILO: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MS. FILO:

7 Q. Good afternoon, Mr. Lara. How are you presently
8 employed?

9 A. I'm the assistant principal at O.B. Whaley School.

10 Q. How long have you been the assistant principal at O.B.
11 Whaley School?

12 A. This last year was my first year officially as assistant
13 principal. Prior to that, I was acting assistant principal
14 starting the first week in January of 2010.

15 Q. Okay. Sorry. 2010?

16 A. I'm sorry. It's 2011. Perhaps -- this is 2013, so it
17 has been a year and a half. So 2012, I guess; right?

18 Q. Did you become the acting assistant principal when Lyn
19 Vijayendran went on maternity leave?

20 A. Yes.

21 Q. So if I told you that that was in the 2011/2012 school
22 year, would that be --

23 A. Yes, you are right.

24 Q. Okay. So, Mr. Lara, Ms. Vijayendran went on maternity
25 leave when the winter break essentially started of that year;
26 is that correct?

27 A. Yes.

28 Q. So when you came back to school that year, which

1 calendar year now would have been 2012, January 2012, that's
2 when you began as the acting assistant principal?

3 A. Correct.

4 Q. Did you have a dual duty at the school?

5 A. Yes, I did.

6 Q. What was your second duty?

7 A. I was responsible to teach the study island course,
8 which is the literacy class.

9 Q. Reading program?

10 A. Yes.

11 Q. Mr. Lara, on the morning of January 9, 2012, were you
12 called to the office to assist Lea Peery in sort of the
13 investigation of a parent who would come in with a concern?

14 A. Yes.

15 Q. Okay. That again was January 9, 2012?

16 A. Correct.

17 Q. Was it a Monday morning?

18 A. No. I believe it was a Tuesday. I think it was a
19 holiday on Monday. I could be mistaken, but I think it was a
20 Tuesday.

21 Q. It was early in the week?

22 A. Yes.

23 Q. And you are aware that on that day, January 9, 2012, the
24 San Jose Police Department was called and responded to the
25 school as a result of the parent complaint that was raised
26 with Ms. Peery; is that correct?

27 A. Yes.

28 Q. Mr. Chandler was on campus that January 9th when the

1 police ultimately responded to investigate this claim?

2 A. Could you repeat that, please?

3 Q. Sure. Mr. Chandler, was he was working -- he was on
4 campus when the police ultimately responded to O.B. Whaley
5 School; is that right?

6 A. I don't believe -- I don't remember. I know that the
7 day that the police arrived there, I don't think he was there
8 on that day.

9 Q. Okay. Do you know what time the police got out to the
10 school?

11 A. It was mid-morning. It was not -- I don't believe it
12 was the first thing in the morning.

13 Q. Mr. Lara, I would like to ask you about the day
14 following, okay? So the police were called on January 9th.
15 Were you on campus at O.B. Whaley Elementary School on the
16 morning of January 10th?

17 A. Yes.

18 Q. What time did you get to school that morning?

19 A. I got there earlier than usual. I can't remember the
20 exact time that I came in, but I opened the school and
21 disarmed the alarm system. We were expecting reporters to be
22 there. That was the only reason that I was earlier than --
23 even the janitor wasn't there.

24 Q. Okay. And what time -- do you know exactly or
25 approximately what time that was?

26 A. I don't remember. It was dark and it was before 6
27 because usually our janitor starts 6, 6:30. He wasn't there
28 yet.

1 Q. Okay. At about 6:45 that morning, did you see Craig
2 Chandler come onto the campus?

3 A. Yes, I did.

4 Q. Did you see Mr. Chandler carrying anything?

5 A. He had a grocery bag.

6 Q. Okay. Grocery bag. Plastic? Paper?

7 A. Plastic, I believe.

8 Q. What time does school normally start in the morning?

9 A. 8:30.

10 Q. What time do you normally get to the campus?

11 A. Around between 7 and 7:30.

12 Q. Do you know what time Mr. Chandler would normally get
13 onto the campus?

14 A. No. That was my first week, or my second week in
15 administration, so prior to that, I didn't really have any --
16 you know, observing teachers coming or leaving.

17 Q. Okay.

18 A. Or near the office where we would see them.

19 Q. All right. So at about 6:45 in the morning you saw Mr.
20 Chandler come onto the campus carrying this grocery bag?

21 A. Yes.

22 Q. Were any other teachers on the campus at this time?

23 A. No. That was only him and Dan Deguara and I were on
24 campus.

25 Q. Who is Dan Deguara?

26 A. He's the director. I can't remember his exact title,
27 but he's under the -- in the district office.

28 Q. Okay. So he's not somebody who would normally be on

1 campus?

2 A. No.

3 Q. No other teachers were on campus at that hour?

4 A. Not that I'm aware of.

5 Q. Okay. You said that you saw him carrying a plastic
6 grocery-type bag. Do you know what color it was?

7 A. I don't remember.

8 Q. Okay. Did it appear to have anything in it?

9 A. It had something, but I couldn't tell.

10 Q. Okay. Do you remember talking to Officer Pierce, Det.
11 Pierce right to my right?

12 A. I have talked to him.

13 Q. He might have looked a little different back then. Do
14 you remember telling Det. Pierce that there appeared to be
15 something heavy in the bag?

16 A. Yes, there was something in there.

17 Q. Okay. Did you and Mr. Deguara go to -- did you see
18 where Mr. Chandler went?

19 A. To his classroom.

20 Q. Did you go -- did you and Mr. Deguara go to Mr.
21 Chandler's classroom?

22 A. I was coming back from making some copies, back into the
23 office. My office space was Lyn's, Ms. Vijayendran's former
24 office. I was heading back into my office and that's where
25 Dan was at.

26 Q. So did you and Dan then go to Mr. Chandler's classroom?

27 A. Yes.

28 Q. Okay. Do you have any idea how much time passed from

1 the time that Mr. Chandler came onto campus to the point at
2 which you and Mr. Deguara went to the classroom?

3 A. I don't know the exact number of minutes that passed in
4 between.

5 Q. Okay. Could you give me an estimate? Long time? Short
6 time?

7 A. It was a short time.

8 Q. When you got to Mr. Chandler's classroom, was the door
9 open or closed?

10 A. It was locked; closed and locked.

11 Q. Closed and locked. Do you know how those doors -- how
12 do the doors lock in those classrooms?

13 A. You must unlock them from the inside with your key, or
14 any other key. Any key locks or unlocks doors from the
15 inside.

16 Q. From the inside?

17 A. From the inside. You could only unlock it from the
18 outside with the key.

19 Q. Okay. So you can lock it from the inside, but only
20 unlock it from the outside?

21 A. No. You can unlock it from the outside.

22 Q. Okay.

23 A. So let's say I have my own classroom, I could get in my
24 own classroom and open my own classroom. However, if I'm in
25 the office and I need to lock that door, I can unlock it with
26 my key. You could unlock any door from the inside with any
27 key.

28 Q. I see. Okay. How would you -- can you lock the door

1 from the inside?

2 A. Yes.

3 Q. Okay. Is it just like a push button?

4 A. No, you use your key. In fact, that's the only way you
5 could lock it from the inside.

6 Q. Okay. I think I got it now.

7 So you said that you found Mr. Chandler's classroom
8 door closed and locked?

9 A. Yes.

10 Q. How did you get in?

11 A. Dan opened it with his key.

12 Q. He has like a master key of some sort?

13 A. I have a master key for that school, but I didn't open
14 it. He has a district key that opens any of the school
15 doors.

16 Q. Okay. What did you see when you got into the classroom?

17 A. Mr. Chandler was near his desk.

18 Q. Did you see this -- the plastic grocery bag that you
19 described?

20 A. I don't remember seeing it.

21 Q. Did you see anything -- did you see anything else that
22 was out of the ordinary?

23 A. He was moving -- well, once Dan told him that he needed
24 to leave, he started walking around the classroom.

25 Q. Okay. Walking around the classroom. Did he do anything
26 as he was walking around the classroom?

27 A. If I recall correctly, he asked if he could take
28 personal belongings, and he was told yes.

1 Q. Did you see him put anything into this bag that you
2 talked about?

3 A. I don't remember. He took some stuff. He opened the
4 closet and his desk, and the teaching wall, there is like
5 shelves there, he took stuff. I don't know what he took, and
6 honestly, I don't remember what he put it in, but he did --
7 he took some stuff.

8 Q. Okay. Did you tell Det. Pierce that you saw Mr.
9 Chandler pick up a bottle of Lysol and a container of Clorox
10 Handi Wipes and put those in the bag?

11 A. I don't remember the exact brands at this point. This
12 has been almost 18 months. I remember seeing some cleaning
13 supplies taken.

14 Q. Taken?

15 A. They were on top of the shelf, you know, towards the
16 back of the room and he took them.

17 Q. Took them out of the classroom?

18 A. Um-hum, exactly.

19 Q. Okay. Did he open up cabinets and look in cabinets
20 while you were there?

21 A. Yes.

22 Q. Do you remember him taking anything from any of the
23 cabinets?

24 A. He took some objects. I don't remember what they were.

25 Q. Nothing caught your attention?

26 A. No. It was really quick, so all of this happened very
27 quickly.

28 Q. All right. At that time, Mr. Chandler was escorted off

1 the campus?

2 A. Yes.

3 Q. Okay.

4 MS. FILO: That's all I have, Your Honor. Thank
5 you.

6 THE COURT: Thank you.

7 Cross-examination?

8 MR. MADDEN: Thank you.

9 CROSS-EXAMINATION

10 BY MR. MADDEN:

11 Q. Good morning -- I'm sorry -- good afternoon. It's been
12 a long day.

13 A. Good afternoon.

14 Q. How long have you been at O.B. Whaley in any capacity?

15 A. I completed my 11th year as employed with the Evergreen
16 School District. Prior to that, I worked approximately two
17 years for another program. So I have been 13 years total at
18 that site.

19 Q. At O.B. Whaley?

20 A. At O.B. Whaley School.

21 Q. Thirteen years prior to today?

22 A. Yes.

23 Q. Okay. So you were actually at O.B. Whaley before Mr.
24 Chandler was hired to teach there?

25 A. Yes.

26 Q. Okay. Were you a teacher there at some time?

27 A. Yes, I was a teacher there.

28 Q. What grade did you teach?

1 A. Fourth and fifth.

2 Q. Okay. Then you moved into basically an administrative
3 career?

4 A. I moved first into teaching literacy, and I did two
5 years of that prior to moving into administration.

6 Q. Okay. So you basically then had known Mr. Chandler as a
7 fellow teacher/professional for almost nine years prior to
8 this incident?

9 A. Yes. I met him since he was hired for the school.

10 Q. Okay. And are you a person that typically arrives to
11 school -- strike that.

12 When you were a teacher, did you typically go to
13 school early to prepare for the day, or did you get there
14 just before the day started?

15 A. No. Usually, I'm there earlier than at least an hour
16 before school starts.

17 Q. So it was custom and habit while you were a teacher
18 anyway to get there at least an hour before school started?

19 A. Exactly.

20 Q. And you go to your classroom?

21 A. Yes.

22 Q. And would you spend that hour then preparing for your
23 teaching for that day?

24 A. Yes.

25 Q. Some teachers prepare the night before and some teachers
26 prepare the day of; is that correct?

27 A. Yes. It all depends on what is your preference.

28 Q. Your preference was to go early and prepare that day for

1 what you were going to do?

2 A. Yes.

3 Q. You had your lesson plan, schedule, things like that?

4 A. Yes.

5 Q. Okay. Now -- so school started -- the first bell was at
6 8:30?

7 A. Some intervention courses start before, but officially
8 the school starts at 8:30 for all children.

9 Q. Thank you for that clarification.

10 But generally speaking, for regular teachers the
11 school day starts at 8:30?

12 A. 8:30.

13 Q. Okay. So, then since you've known Mr. Chandler for
14 years or -- strike that.

15 You drove to school?

16 A. I'm sorry. Could you repeat that?

17 Q. How did you travel to school? By car?

18 A. Yes.

19 Q. Okay. And in front of the school there is a faculty
20 parking lot; correct?

21 A. Yes.

22 Q. That's where all the teachers park?

23 A. Correct.

24 Q. And typically when you got there when you were teaching,
25 would your car be one of the first cars, or were there
26 typically other teachers there?

27 A. There were some teachers who got there before me.

28 Q. Mr. Chandler was one of those teachers; right?

1 A. I don't remember.

2 Q. All right. You have no memory of him also being a
3 person who liked to prepare in the morning?

4 A. Honestly, I don't remember. You know, I get off my car
5 and go to my classroom.

6 Q. Okay. So you have no memory one way or the other
7 whether or not Mr. Chandler was a teacher who typically
8 arrived early in the morning before school?

9 MS. FILO: Objection. Asked and answered.

10 THE COURT: Sustained.

11 MR. MADDEN: Thank you, Your Honor.

12 BY MR. MADDEN:

13 Q. Now, I want to ask you some questions about the locks
14 that -- I'm not sure I understand, but I may. So the doors
15 into the classrooms are not standard locks, like residential
16 locks?

17 A. No.

18 Q. All right. They are like keyed on both sides?

19 A. Yes.

20 Q. And I'm assuming that they are keyed on both sides
21 because maybe, for one reason, you don't want kids
22 inadvertently locking doors or teachers out or anything like
23 that; right? It's a safety concern?

24 A. It's a safety concern.

25 Q. All right. There is probably unfortunately the reverse
26 safety concern when locking it from the inside; right?

27 A. I don't know.

28 Q. Well, for example, a teacher like Mr. Chandler would

1 have a key to the outside of his door; right?

2 A. Yes.

3 Q. No other teacher would have that -- they couldn't get
4 into his classroom with their keys?

5 A. Except the administration with the master key.

6 Q. Exactly. The administration at O.B. Whaley, and
7 apparently in the district there is a key that will open
8 every door in the district?

9 A. Exactly.

10 Q. Okay. So on the other hand, if a teacher was in another
11 -- any other classroom, on the inside of any classroom, not
12 just theirs, but any classroom, their key to their own room
13 would open the interior door of every classroom; correct?

14 A. It will lock it or unlock.

15 Q. All right. That's also a safety purpose; correct?

16 A. Yes.

17 Q. For example, should there be intruders at the school,
18 should there be an emergency, a teacher could go into a
19 classroom and close and lock the door?

20 A. And lock the door.

21 Q. All right. So those are the two safety purposes for
22 that system; correct?

23 A. Yes.

24 Q. So you can't -- from the inside, you cannot lock that
25 door if you are a child; correct?

26 A. Unless you have a key.

27 Q. Exactly. And if you are an adult, if you are a teacher,
28 you have to go across the classroom and put the key in the

1 door and lock it; correct?

2 A. Yes.

3 Q. All right. Now, let's talk a little bit about the
4 windows. We had an earlier witness, Ms. Montgomery, who is
5 retired, testified that the windows in the building that
6 contains Mr. Chandler's old classroom, 18, and
7 Ms. Montgomery's class, which I think was 19, there are two
8 more classrooms in that building; right?

9 A. Yes.

10 Q. And there are doors connecting those rooms that don't
11 have locks; right?

12 A. They didn't have locks. They do have locks now.

13 Q. At the time Mr. Chandler was there, they did not have
14 locks?

15 A. They didn't have locks.

16 Q. All right. Why has that change been made?

17 A. Those rooms have been adopted by the YMCA after school
18 program, and the teachers didn't want children or other
19 adults to come into their classroom.

20 Q. I see. All right.

21 So the entire time that Mr. Chandler was at O.B.
22 Whaley, the door between his classroom and the other
23 classroom had no lock on it?

24 A. That's my understanding.

25 Q. All right. Now, the windows at O.B. Whaley in that
26 particular building, and I guess all of the buildings, there
27 seem -- the windows seem to have been customized at some
28 point where glass was taken out and wood placed inside that;

1 correct?

2 A. Well, since I got hired at that school, they have been
3 like that. I don't know when that change happened.

4 Q. The way they were on January 10th, day of Mr. Chandler's
5 escort from the campus, these windows were like that then;
6 right?

7 A. Yes.

8 Q. Had been the entire time he was the teacher?

9 A. Yes.

10 Q. Do you know why that happened?

11 A. No.

12 Q. All right. Do you remember whether it had anything to
13 do with vandals in the neighborhood or anything like that?

14 MS. FILO: Objection, Your Honor. Calls for
15 speculation.

16 BY MR. MADDEN:

17 Q. Does that help --

18 THE COURT: Sustained.

19 BY MR. MADDEN:

20 Q. Does that help you remember if I were to suggest they
21 were done?

22 A. I wasn't there when the change happened by the district
23 office, so I can't really respond to that.

24 Q. Okay. That was before your time?

25 A. Yes.

26 Q. Okay. So you remember seeing Mr. Chandler -- did you
27 see him drive up on the 10th, January 10th?

28 A. No. I saw him right outside K, the kindergarten

1 classroom, right on the side of the office. I was coming
2 back from making copies, so he was already walking towards
3 his classroom when I saw him.

4 Q. Assuming Mr. Chandler parked in the teacher's parking
5 lot, the most direct line would have been from the parking
6 lot right along the route where you saw him; correct?

7 A. Yes.

8 Q. All right. And you remember him carrying a bag?

9 A. Yes.

10 Q. You don't remember the size of the bag, do you?

11 A. It's like a regular grocery bag, plastic bag.

12 Q. Well, can you give me an approximation of the size?

13 A. It was pretty standard, you know, like where you get at
14 Safeway, or just a grocery bag.

15 Q. Okay. Could you put your hands out and sort of frame it
16 in for me, tell me what you are talking about? I mean, when
17 I think of a Safeway bag, I'm thinking of a paper bag.

18 A. No, it's not. It was like ten-by-eight inches or so.
19 It was a regular bag, but what it had -- it was like
20 something, you know, in that frame (indicating).

21 Q. Typically it's a standard white plastic bag; right?

22 A. Yes.

23 Q. Went over to Zanotto's, you get a sandwich, you get one
24 of those; right?

25 A. Yes.

26 Q. You have no idea what was in that bag; right?

27 A. No. I couldn't see.

28 Q. All right. There would be nothing unusual about a

1 teacher carrying a plastic bag to school in the morning,
2 perhaps?

3 A. No. Some people carry stuff in there. They bring stuff
4 that they purchase or perhaps their lunch. It's not
5 untypical to see that.

6 Q. Okay. So in the time that went by from you talking to
7 Dan until you and Dan going to Mr. Chandler's class was, I
8 think in your testimony, a short time?

9 A. It was.

10 Q. Would that be perhaps less than ten minutes?

11 A. I believe it was less than ten minutes.

12 Q. Perhaps less than five minutes?

13 A. I don't think so.

14 Q. Okay. And so you walked together; correct, to the door?

15 A. Yes.

16 Q. Mr. Deguara opened the door; right?

17 A. Yes.

18 Q. He knock first or anything?

19 A. I don't remember if he knocked or not.

20 Q. Okay. And so he went in first because he had the key?

21 A. Yes.

22 Q. You were right behind him?

23 A. Um-hum.

24 Q. Lights were on?

25 A. Yes.

26 Q. Mr. Chandler, was he seated at his desk?

27 A. He was standing.

28 Q. He was standing then?

1 A. Yes.

2 Q. All right. Tell me where he was standing.

3 A. Near his desk.

4 Q. All right. So I'm going to ask you to look at the
5 photograph just off your right shoulder. Actually, you could
6 look at both. I want to identify them for the record.

7 MR. MADDEN: May I approach, Your Honor?

8 THE COURT: Yes. Thank you.

9 BY MR. MADDEN:

10 Q. Want I'm pointing out at the easel is A-1, that appears
11 to be Mr. Chandler's desk; right?

12 A. Yes.

13 Q. Were you looking at this one?

14 A. Yes.

15 Q. This also depict -- this is a different angle of it?

16 A. Yes.

17 MR. MADDEN: For the record, that's A-2.

18 BY MR. MADDEN:

19 Q. So when you say he was standing near his desk, do you
20 have any memory?

21 A. I believe he was in this area here. In this area here.

22 Q. All right. Indicating between the desk and the yellow
23 post-it one?

24 A. Yes.

25 Q. Okay. So within a foot or two of his chair?

26 A. Yes.

27 Q. Okay. Did you see anything on his desk?

28 A. He had many things.

1 Q. Do you remember seeing anything on his desk?

2 A. There was stuff on his desk.

3 Q. By stuff, like papers? Books?

4 A. Yes.

5 Q. Okay. I see a container here of some sort. Do you know
6 what that is?

7 A. Looks like a hand sanitizer.

8 Q. Okay. Do you remember if that was there when you walked
9 in?

10 A. I don't. I don't remember.

11 Q. I don't expect you to. I'm just asking the question.

12 A. I don't remember.

13 Q. Then this appears to be perhaps a water bottle. You
14 don't have any memory of that either; right?

15 A. No.

16 Q. Okay. And Mr. Chandler wasn't cleaning anything or
17 anything like that at that point, was he?

18 A. No. He grabbed the stuff, but I didn't see him cleaning
19 when I first --

20 Q. Let's do it a question at a time. He was right next to
21 his desk and there were documents, papers, teacher stuff on
22 his desk; right?

23 A. Yes.

24 Q. It appears as if he had been working; right?

25 A. I cannot say that. He was standing, so I don't know if
26 there was stuff there, but I never went into that classroom.
27 I stood on the frame of the door, so I couldn't tell.

28 Q. Okay. But if he was preparing for a class, it would

1 have been normal for a teacher to have been at his desk and
2 documents and books and papers; right?

3 A. Depends on who he's preparing for.

4 Q. But there is only one desk in the class; right?

5 A. Yes, there is only one teacher's desk.

6 Q. By the way, when you open that door to Mr. Chandler's
7 class, when you open up you are looking at his desk right
8 across the room; right?

9 A. Yes.

10 Q. Now, Mr. Deguara announced to him that he was on
11 mandatory administrative leave. He had to leave the school
12 and be escorted; right?

13 A. Yes.

14 Q. And then Mr. Chandler remained standing; right?

15 A. He asked if he could remove personal belongings from the
16 classroom.

17 Q. And did either you or Mr. Deguara respond to that?

18 A. Dan did. Mr. Deguara did.

19 Q. Do you remember what he said?

20 A. He said yes.

21 Q. Okay. And then Mr. Chandler started gathering some
22 things, but you don't really remember what it was; right?

23 A. No.

24 Q. Some things you remember, some things you don't
25 remember; is that fair?

26 A. Yes.

27 Q. Okay. But there were items that he removed from the top
28 and the -- or the inside of his desk?

1 A. He opened the drawer of his desk.

2 Q. Okay. Did he remove anything from the drawer?

3 A. He removed something from there. He removed something
4 from the closet.

5 Q. All right.

6 A. Behind his desk.

7 Q. I have difficulty with the description of it as a
8 closet. I think it's a closet, but it's been referred to as
9 a cabinet. I'm pointing to this portion of A-2 that has a
10 sign in white that says "group prizes." Is that what you are
11 referring to as his closet?

12 A. Yes.

13 Q. Okay. And then I'm going to point to A-1, this shows
14 the closet; correct?

15 A. Yes.

16 Q. All right. And so then if he went to his closet or his
17 cabinet, that would necessarily mean that he had to have
18 opened the doors?

19 A. Yes.

20 Q. Okay. So that when he was standing there, the doors to
21 his closet were closed when you walked in?

22 A. Yes.

23 Q. Okay. Did you get close enough to see him taking
24 anything from the cabinet?

25 A. No. He never moved from the frame of the door.

26 Q. But did you see him -- but the closet where the doors
27 were open, did they block your view of seeing in the closet?

28 A. Yes, they do.

1 Q. So you don't know whether or not he took any items from
2 his cabinet?

3 A. He put something in the bag. I can't tell what it was.

4 Q. Okay. So you remember him taking something from his
5 desk and something from his closet?

6 A. And the teaching wall.

7 Q. And the teaching wall. So there were three areas from
8 which he obtained items and put them in the bag?

9 A. The cleaning supplies, he took them -- they are right
10 there where you see the black pot.

11 Q. The black pot?

12 A. Right here, just underneath, like on the counter top.

13 Q. Okay. Let me see if I could get a better picture of
14 that. By the way, this photograph, A-6, shows the closet
15 with the doors open; right?

16 A. Yes.

17 Q. Okay. And have you ever looked at this photograph
18 before -- ever looked in his closet?

19 A. Before?

20 Q. Yes.

21 A. No.

22 Q. Before today -- I won't ask you any questions about it
23 then.

24 A. I saw it. We cleaned it up, but it was not until after.

25 Q. When you say you cleaned it up, what do you mean?

26 A. We emptied his classroom.

27 Q. Everything in his classroom?

28 A. Everything in his classroom.

1 Q. And when you say "we," who is "we"?

2 A. There was Lea Peery and Kathy Sheppard, who is the
3 assistant superintendent, and there was Maria
4 (unintelligible), who is the regular noon duty supervisor,
5 and one of the custodians.

6 Q. Do you remember when you did that?

7 A. This was after the San Jose Police Department authorized
8 us to clean the room. It was a Saturday morning, but I can't
9 remember the date.

10 Q. Was it a Saturday morning reasonably close to January
11 the 10th, or was it weeks or months later?

12 A. I will say it was days or weeks. It was not until we
13 got authorization to do so.

14 Q. All right. And so you emptied everything from the
15 classroom and put them in what? Containers? Boxes?

16 A. We put it in boxes, and everything was taken by the
17 district office to the warehouse. That was my understanding.

18 Q. All right. So all of the books, all of the papers,
19 everything in the drawers?

20 A. Everything was taken out. That was an empty room after
21 that.

22 Q. You took everything. How many boxes did you have?

23 A. I can't remember. There was many of them.

24 Q. Maybe 60?

25 A. I will say -- I don't remember, you know. The district
26 must have a record of it. All of them were numbered, so --

27 Q. Were they put on a big pallet out of that --

28 A. We left them near the door by the -- where the hangers

1 are at, we just did a huge pile, and then the district
2 maintenance person came in and took them.

3 Q. I'm still trying to go back and find a better picture of
4 that black pot over here. I'm not sure if I have one. Maybe
5 this photograph is something different. This is A-8, and
6 would this be the area where you --

7 A. We left all of the boxes there.

8 Q. That was basically filled?

9 A. They were numbered with his name and numbered how many
10 boxes.

11 Q. Okay. So as far as you're concerned, you are satisfied
12 that -- with the exception of whatever items Mr. Chandler
13 took with him, the personal items, everything else that was
14 left behind was put in boxes?

15 A. That's my understanding.

16 Q. Went to the district office?

17 A. Yes.

18 Q. All right. Let me keep looking here. You called this a
19 wall back here, something -- I forgot what you called it.

20 I'm looking at -- sorry. I'm referring to A-1, this entire
21 back wall of the classroom, did you call it something?

22 A. No. I said teaching wall. That is where the white
23 board is at. It has some shelves and closet space behind it.

24 Q. You meant -- but when you said the teaching wall, you
25 mean the front of the class?

26 A. Yes. That picture doesn't show that.

27 Q. I was 180 degrees wrong.

28 So this would be the teaching wall?

1 A. That one.

2 Q. Okay. Thank you.

3 A-12; right? That's the teaching wall?

4 A. Yes.

5 Q. This also appears to have had --

6 A. Shelves underneath.

7 Q. Yeah. And did Mr. Chandler walk around the whole room,
8 kind of opening and keeping --

9 A. He went around, yes.

10 Q. How long you think he was in the classroom gathering
11 things before he left the school? You said it was a short
12 time?

13 A. It was less than five minutes.

14 Q. So there wasn't a long time frame to take anything?

15 A. No.

16 Q. Appeared to be in kind of a daze?

17 A. I don't know.

18 Q. I mean, like he would open everything and kind of stand
19 there and look at it?

20 A. It was -- initially, it was just fast, randomly looking
21 at different parts of his room.

22 Q. Okay. So I think this is probably the best photograph.
23 Get back to our conversation. I don't think there is a
24 better one. Probably good enough. This would be A-7.

25 You remember seeing him pick up what is loosely
26 referred to as cleaning supplies; right?

27 A. (Shakes head up and down.)

28 Q. Those were somewhere in the area of this black pot?

1 A. On the counter top right by the -- right there.

2 Q. Where I'm pointing?

3 A. Yes.

4 Q. In other words, there appears to be a cabinet with a
5 Formica-type cabinet top with a book on it, two red plastic
6 boxes, a black pot, some sort of file holder with books or
7 papers in it; right?

8 A. Yes.

9 Q. There appears to be enough room on the right-hand corner
10 there to hold the items you are talking about?

11 A. Exactly.

12 Q. That's where those were when you walked in, I suppose?

13 A. They were there already.

14 Q. Okay. They are already there?

15 A. Yes.

16 Q. Okay. So during the process of taking whatever he took,
17 he picked up a box of wipes?

18 A. A bottle type of --

19 Q. Okay. And again, when you walked in, he wasn't in the
20 process of cleaning anything; right?

21 A. No.

22 Q. And you certainly didn't smell the smell of Lysol or
23 Clorox or anything like that, did you?

24 A. Not from the door frame where I was standing.

25 Q. Right.

26 A. I never made it into his classroom.

27 Q. Okay. Let me just review my notes, Mr. Lara. You may
28 be done, but if you could just give me a moment.

1 Thank you, Mr. Lara.

2 MR. MADDEN: I have no further questions.

3 THE COURT: Redirect, Ms. Filo?

4 MS. FILO: Just one.

5 REDIRECT EXAMINATION

6 BY MS. FILO:

7 Q. Mr. Lara, I want to make sure I'm clear. You said that
8 you did see him pick up the cleaning supplies and put those
9 in the bag. You just don't remember as you sit here today
10 the brand; is that right?

11 A. Yes.

12 Q. Okay.

13 MS. FILO: That's all I have. Thank you.

14 MR. MADDEN: Thank you, Your Honor.

15 THE COURT: Recross on that area?

16 MR. MADDEN: No, Your Honor.

17 THE COURT: Mr. Lara, thank you very much, sir.

18 You are excused and free to leave. You may step down.

19 THE WITNESS: Thank you.

20 THE COURT: Ladies and gentlemen, as I mentioned
21 before our break, we're going to take a recess at this time.
22 I will order all members of the jury to report to the jury
23 assembly room on the second floor tomorrow morning at 9:00
24 a.m. and we'll continue with the trial.

25 Please remember to leave your notebooks on your
26 chair. They will be here when you return. Thank you very
27 much.

28 ///

1 (Whereupon, the jurors were excused and the
2 proceedings were had outside the presence of the jury.)

3 THE COURT: Record will reflect the jury has left
4 the courtroom. Both counsel and Mr. Chandler is present in
5 the courtroom. The juror has returned. That's fine.

6 THE JUROR: I forgot something.

7 THE COURT: That's fine. The juror that returned
8 has left the courtroom. Again, both counsel and Mr. Chandler
9 are present in the courtroom. And I believe, Ms. Filo, you
10 wanted to raise an issue out of the presence of the jury.

11 MS. FILO: I did, Your Honor. I actually -- I now
12 have two issues to raise with the Court. But the first is
13 Mr. Madden made a reference in his opening statement to the
14 police report that was generated as a result of an allegation
15 by a woman named Annie Doi Pham, D-o-i. Last name Pham,
16 P-h-a-m. He made a reference in his opening statements that
17 that report was, quote, buried by the San Jose Police
18 Department.

19 And it's my understanding that Mr. Madden feels
20 this area is appropriate for -- is appropriate to be explored
21 in the context of this trial. And I am making a motion at
22 this time to exclude any reference to discovery issues that
23 officers, if they should be called, not be questioned about
24 them, and to make a specific motion that he be prevented from
25 making any argument whatsoever that reference any discovery
26 inappropriate with respect to that report or any other
27 report. If there are any issues with respect to discovery,
28 they are not to be raised with the jury. They should be

1 addressed to the Court and resolved by the Court.

2 THE COURT: Okay. Thank you.

3 Mr. Madden, any response?

4 MR. MADDEN: I'm not exactly sure where the motion
5 is. I take it, there are no moving papers?

6 THE COURT: Correct. We discussed this informally,
7 and at least at sidebar, as I understand it, counsel could
8 correct me, during this investigation an officer interviewed
9 Ms. Pham. She basically alleged that she had sex with Mr.
10 Chandler in the classroom. The information I had is that it
11 was not consensual. I understand that you have investigation
12 that sheds more light on that, and the officer that took this
13 report used a different case number in the investigation, or
14 at least the interview of this particular witness, which was
15 different than the police report case number by you by the
16 San Jose Police Department in the alleged child molest
17 investigation. And as I understand it, that particular
18 report was not turned over to the defense.

19 It's my understanding that Mr. Madden, he became
20 aware of this in some manner, made a request for that police
21 report. And as I understand it, after the request, Ms. Filo,
22 you provided the report?

23 MS. FILO: Correct.

24 THE COURT: Okay. I want to get it chronologically
25 correct, and I'm not sure the date when that report was
26 turned over to Mr. Madden.

27 MS. FILO: So, Your Honor, just for clarification
28 sake, the police report was generated on or about January

1 19th, 2012. Mr. Madden had Ms. Pham's interview on or about
2 January 17th, 2013. He sent me a copy of his investigator's
3 report somewhere in -- I believe it was around the first week
4 of May 2013. And upon receiving that report, his
5 investigator's report, having a conversation with Mr. Madden,
6 I provided the January 19th report to Mr. Madden.

7 MR. MADDEN: I would like to be heard on that.

8 THE COURT: Sure.

9 MR. MADDEN: That is consistent with my
10 recollection for some points, but not all.

11 THE COURT: Okay.

12 MR. MADDEN: The dates were approximately right. I
13 believe I sent my investigator's report concerning her
14 interview of Ms. Pham on or about the last third of April.
15 But since I don't have my file with me, I'm not prepared to
16 represent that with certainty, but it's not that far from the
17 date Ms. Filo was suggesting. It was certainly something
18 that I was obliged to -- since she was going to be on my
19 witness list, it was material that I had to turn it over to
20 the prosecutor, and I did.

21 There was not an immediate response from the
22 prosecutor's office. In fact, I was surprised that there was
23 no response because I would have thought the information that
24 I sent would have prompted an immediate phone call, and I
25 don't think it was for several weeks that we had a phone
26 call, the phone conversation. And I think I expressed my
27 surprise that she hadn't called me to talk about this report,
28 and she made a reference during that phone call of: What did

1 you mean? The crazy lady? She said: That's all in the
2 report. And I said: What did you mean crazy lady? And it's
3 not in my report that I have. And there was this pause or
4 this silence on the phone.

5 At the end of that pause, at the end of that
6 silence, I asked Ms. Filo to -- I told her again that it was
7 not in my discovery packet, which consisted at that time of
8 approximately 406 or 412 pages of police reports and
9 documents, and I asked her to fax me over the report. And
10 she did, but it was not -- it was a different police report
11 number and it was not connected with this case. I've had
12 additional conversations with Ms. Filo, and I don't want to
13 speak for her. I'm more than willing to have her recite the
14 facts as she recalls them.

15 But my concern, and it was legally more my concern,
16 quite frankly, it was either that in May of last year, more
17 than a year ago, the People at the preliminary examination
18 presented evidence from -- somebody from the lab, a DNA
19 expert, who testified concerning identifying semen stains of
20 Mr. Chandler in the classroom. And at the time of that
21 preliminary examination, the People -- the police were well
22 aware of the identity of Ms. Pham, and they submitted the DNA
23 evidence to Judge McKay McCoy for the sole purpose of
24 creating an inference that the semen stain in the classroom
25 was the result of Mr. Chandler molesting one or more of these
26 five complaining witnesses. I was, and remain angered, that
27 they could allow that inference to be made, knowing there was
28 another inference that could be drawn that the semen stain in

1 the classroom could be as the result of consensual sexual
2 intercourse, or any kind of sexual intercourse with an adult
3 female.

4 And that knowledge, as I understand it today, it's
5 my understanding, and I may be wrong, this is from my
6 conversations with Ms. Filo, that there was a discussion
7 between the officer who took that statement, who was Officer
8 Latrendress, I think is the pronunciation of her name. It's
9 L-a-t-r-e-n-d-r-e-s-s. I think her first name is Tina. Was
10 one of the investigators, one of the active investigators of
11 her case, and her name appears on several locations in this
12 report in terms of interviewing witnesses. That's my
13 understanding that -- I shouldn't say it's my understanding.
14 It's my assumption -- it would be hard for me to believe that
15 if the report that -- let me strike that. Go back a sentence
16 or two.

17 It's my understanding that Ms. Latrendress
18 inadvertently learned of this allegation of sexual
19 intercourse with Mr. Chandler with Ms. Pham because Ms. Pham
20 is the mother of one of the children who were interviewed in
21 this case. Not one of the complaining witnesses, but one of
22 the children who was interviewed. And that she apparently
23 volunteered in a way that apparently was not very credible to
24 Officer Latrendress, and I'm assuming to Officer Pierce, and
25 that report was not made part of this case.

26 It was a very brief -- although I don't have it
27 with me. I think it's less than a one-page report, I
28 believe. It's a couple of paragraphs that was audio

1 recorded. I think it was a 12-minute interview, and she
2 gave -- she claimed that she had been raped in Mr. Chandler's
3 classroom at back-to-school night. But I would submit that I
4 don't think was very credible. I don't think it was very
5 credible to the police.

6 THE COURT: Let me interrupt you, Mr. Madden,
7 before I hear from Ms. Filo. You made a lot of comments.
8 You made your understanding of what had occurred and made
9 some assumptions. But based on your understandings and
10 assumptions, what are you asking for? What kind of remedy
11 are you asking for?

12 MR. MADDEN: Number one, this is not my motion at
13 this point. This is Ms. Filo's. She's asking that I not
14 refer to it.

15 THE COURT: Right. And I need a response as to
16 that.

17 MR. MADDEN: What I'm looking for is that I think
18 that to the extent, if any, that there was intentional
19 burying of this report, I should be able to comment on that.
20 That is fair game as a defendant in this case.

21 THE COURT: Okay.

22 Ms. Filo, you want to respond?

23 MS. FILO: Sure. So, Judge, I mean, these are --
24 first of all, I will tell you that Officer Pierce and every
25 other police officer in the San Jose Police Department will
26 testify that a separate case number will be pulled for an
27 entirely different crime, even though it originates out of
28 another investigation. If it's a robbery that resulted in a

1 burglary, the burglary will have a separate case number than
2 the robbery. I mean, there is just -- it will just not be
3 the evidence ever that this would have been assigned the same
4 case number. So happy to prove that if the Court requires
5 it. But I could assure you, as an officer of the court, and
6 my offer of proof to you, is that that will be unequivocally
7 the way it's done in every single case.

8 More importantly, there are two issues to deal
9 with, two lines of analyses: 1054 and *Brady*. This is
10 clearly without a doubt not a 1054 violation. This is not a
11 statement of a witness, it's not a writing, it's not a
12 declaration, any of the things that 1054 will require. The
13 only issue is whether or not this was *Brady* material.

14 First and foremost, until two weeks ago, three
15 weeks ago, there was no case law in the State of California
16 that suggested that *Brady* was actually a pre-prelim right.
17 *Brady* under the Federal Constitution, under Prop 115, has
18 always been a due process trial right that the defendant has.
19 So there is some very recent case law that suggests that
20 there is a pre-prelim *Brady* right. It didn't exist at the
21 time of this prelim, for starters.

22 Secondly and more importantly, the People have no
23 obligation to put on exculpatory evidence at a prelim. We
24 don't have an obligation to put it on. This wasn't a grand
25 jury proceeding. We don't have the *Johnson* obligation. We
26 don't have the obligation to put on exculpatory evidence. We
27 put on the evidence to establish probable cause.

28 Mr. Chandler at the preliminary hearing chose to

1 put on no evidence. That's his right. He's totally entitled
2 to do that. But the idea that the defendant had an
3 alternative explanation for semen being found in the
4 classroom, i.e., the defendant himself had sex with an adult
5 woman, is uniquely within the knowledge of the defense. They
6 know about it. Of course they know about it. He did it. So
7 it is absurd to me that we would have to produce a report
8 pre-prelim that would suggest that the -- tells the defendant
9 what he knowingly did.

10 So now we're at trial, and the question is, is
11 there some *Brady* violation? I would challenge counsel to
12 find a single case, any case in the State of California, or
13 anywhere, which suggests that information that the defense
14 has, and has had since January of this year -- actually, has
15 had since the very day Craig Chandler had sex with this woman
16 in the classroom, because it's in his head, he's the
17 defendant, they've had that knowledge since that day, but
18 certainly since January of 2013 constitutes any type of *Brady*
19 violation.

20 What they want to do is suggest we committed some
21 misconduct by not providing them with the report. We didn't
22 have the information that it was *Brady*. It was inconceivable
23 to any of us that a rape allegation constituted exculpatory
24 evidence, but it doesn't matter. It doesn't matter
25 subjectively what I thought or what anyone in my office
26 thought because the defendant had the information. There can
27 be no *Brady* issue when the defense has the information.
28 Doesn't matter where they get it from. If they have it, no

1 Brady, end of inquiry, end of discussion for any purposes at
2 this trial.

3 THE COURT: I have a question. Mr. Madden made
4 reference to a conversation he had with you over the phone
5 about, I think his investigation or something, and he
6 mentioned that your response -- he made reference to "a crazy
7 lady," but he also mentioned that you said, "It's in the
8 report." And my question is, do you recall that, and what
9 did you mean by that?

10 MS. FILO: I do recall. I mean, I recall the
11 conversation and I recall saying "the crazy lady," and I did
12 remember that there was a report out there. And to be honest
13 with you, at the time that I had that conversation with Mr.
14 Madden, with 400-some-odd pages of discovery just in police
15 reports alone, I just didn't remember whether that had been
16 produced to him or not. I assumed that it had, but I didn't
17 know the answer to that.

18 THE COURT: That's the reason I asked that
19 question, because your comment seems to create a reasonable
20 inference that he had it and that's why I asked that
21 question. I'm assuming you were done?

22 MS. FILO: Yes.

23 THE COURT: Mr. Madden.

24 MR. MADDEN: Your Honor, Brady has nothing do with
25 the defense. It has everything to do with the prosecution
26 and you only analyze it from that standpoint. I don't have a
27 dog in that hunt. It's Ms. Filo's or her office's
28 obligation, period. She's dead wrong on that.

1 What I'm troubled by is that, number one, I have to
2 put this in context for you. Ms. Pham said nothing about a
3 rape when she first talked with my investigator. My
4 investigator generated a written report, brought it out to
5 her to get to her to read it, to date it, and to sign it as
6 being accurate, an accurate reflection of what she told my
7 investigator when my investigator took the statement.

8 THE COURT: What did she tell the police officer?

9 MR. MADDEN: Hang on.

10 THE COURT: I mean, what she told your investigator
11 to me, as far as *Brady*, I don't see how that is relevant to
12 this issue.

13 MR. MADDEN: I don't understand -- well, let me
14 finish.

15 THE COURT: Okay.

16 MR. MADDEN: I'm upset because the People through
17 gross negligence -- I'm going to withdraw that comment.
18 That's inappropriate because I don't have enough information.

19 THE COURT: Okay.

20 MR. MADDEN: But I'm troubled when the police or
21 the District Attorney's Office, or both, are not providing me
22 with information that is potentially exculpatory to my
23 client, and obviously this information is potentially
24 exculpatory.

25 THE COURT: Okay. Let's assume --

26 MR. MADDEN: And -- hang on. My investigator does
27 not have a statement -- she has a statement, but it does not
28 talk about rape, and then she goes back to sign it and makes

1 some changes that she felt like it was rape, but it was
2 really not very convincing. I would submit to the Court
3 about as convincing as Ms. Pham was to Officer Latrendress
4 concerning that first part about being raped.

5 But I do not believe -- well, I know that the
6 attorneys who represented Mr. Chandler at the time, I think
7 Ms. Filo will agree, did not have that report. How it just
8 seems completely wrong to me that they are bringing in a DNA
9 expert, asking a lower court judge to draw an inference from
10 DNA evidence when they either knew or clearly should have
11 known that they had evidence of a statement of a different
12 inference that could be drawn from that, that they asked to
13 be drawn from the DNA expert. Does that make sense?

14 THE COURT: It does make sense. But you have all
15 of this information now. You had it before the case was
16 assigned to trial. You have this woman on your witness list.
17 As I understand it, she's a part of your defense and will be
18 called. So even --

19 MR. MADDEN: Let me interrupt you.

20 THE COURT: Even if I conclude there was a *Brady*
21 violation, and I'm not even suggesting there was any bad
22 faith here on the part of Ms. Filo, but let's assume that I
23 accept that point, I don't see how at this point Mr.
24 Chandler's right -- due process right to a fair trial has
25 been impacted in any way.

26 MR. MADDEN: This isn't my motion. All right.
27 This is the People's motion.

28 THE COURT: I know, and that was very crucial to me

1 to decide what you will be allowed to ask the officer about
2 this. I mean, you are trying to suggest that there was some
3 wrongful conduct on the part of the prosecution; that they
4 didn't disclose this information to you, and basically your
5 words that this report was buried. And, quite frankly, based
6 on everything I heard at this point, I don't think that's
7 appropriate. I think it's very fair for you to ask the
8 officer that took the report: Did you take this report? For
9 example, what case number? Did you assign a different case
10 number? Why did you use a different case number? And
11 explains why he does that.

12 MR. MADDEN: She.

13 THE COURT: Or she did that. And beyond that, I
14 don't see how any further questions or suggestions have an
15 impact on Mr. Chandler's right to a fair trial because his
16 defense is ready and prepared to go forward, and I think it
17 was ready before the case was even assigned to trial. And if
18 it had not been, you would obviously be allowed to have a
19 continuance for more time to prepare.

20 So that's my concern, Mr. Madden. I appreciate
21 you're angry and your dealings with the prosecutor's office
22 and maybe San Jose Police Department may be impacted in some
23 manner. But what is the remedy here, assuming there was any
24 wrongdoing that you articulated? Because that's *Brady*.
25 Right on point, *Brady* basically says, what's the due process
26 violation for a fair trial? And it's just not present here
27 that I could see.

28 MR. MADDEN: I'm prepared to submit it, Your Honor.

1 THE COURT: Okay. So that's the Court's ruling. I
2 will rule that there will be no suggestion that reports were
3 buried, they were trying to hide things. I think it's fair
4 to bring out the fact that a different police report number
5 was used. I mean --

6 MR. MADDEN: That's all that I could do?

7 THE COURT: What else do you want to do?

8 MR. MADDEN: What does that get me?

9 THE COURT: Well, it gets you --

10 MR. MADDEN: Nothing.

11 THE COURT: But see, what you want is this
12 witness -- availability of this witness. This witness to
13 testify, the evidence to present, as a part of your defense,
14 that Mr. Chandler had sex with this woman and that is an
15 alternative or another explanation why there is semen on
16 these chairs.

17 MR. MADDEN: See, what's going to happen when that
18 comes in, the People will -- I guarantee you they will argue
19 he raped her. More dirt to throw on Mr. Chandler. They
20 never believed that he did it.

21 THE COURT: And that's why initially this wasn't
22 really relevant, or they would be allowed to call her as a
23 witness in the trial.

24 MR. MADDEN: They are not calling her.

25 THE COURT: Exactly.

26 MS. FILO: That's -- it's not my witness.

27 MR. MADDEN: Yes, but they are going to question
28 her and suggest that she was raped when they don't believe

1 she was.

2 THE COURT: Well, I don't know what they believe,
3 but the circumstances of the sexual encounter, I think, are
4 relevant because there has to be some sort of framework of,
5 like, where the sex was happening, how it occurred, what
6 parts of the classroom. That has to have some impact
7 relating to the semen evidence. And again, I don't know what
8 the police report says or the investigation report, but it's
9 a collateral issue beyond the sex. But I think in fairness
10 to both sides, there has to be some cross in this area. But
11 for the defense calling her, and I think it's reasonable
12 under the circumstances, this evidence would never be
13 allowed. I would keep it out if the People tried to bring it
14 in.

15 MS. FILO: Right. That's my point, Your Honor.

16 THE COURT: I appreciate, Mr. Madden, that this
17 whole issue and the history is upsetting to you and
18 frustrating, but that's the Court's ruling, and it's over
19 your objection that you should be allowed to go in more
20 detail about the facts and circumstances of how this report
21 was generated and ultimately you received it.

22 MR. MADDEN: Thank you, Your Honor.

23 MS. FILO: Thank you, Your Honor. I have one
24 other, I hope, quick issue to resolve. I confirmed with Det.
25 Pierce. While Armando Lara was testifying -- as the Court
26 knows, Det. Pierce did interview Mr. Chandler on the 9th --
27 on January the 9th. It was a two hour or so interview,
28 something like that. The interview concluded and was over.

1 It was apparently after-hours at the police department, so
2 Det. Pierce actually had to walk Mr. Chandler out of the
3 building. As he walked him out of the building, he told Mr.
4 Chandler, and it is reflected in this report, that he was not
5 to go onto the campus and he was in fact supposed to call the
6 principal in the morning and get further instructions.

7 MR. MADDEN: Your Honor, if the People are
8 suggesting they are going to offer that testimony, I would
9 like to be heard. To begin with, Officer Pierce has no
10 authority to tell anybody where to go to work, number one.
11 Mr. Chandler had no obligation -- Officer Pierce has the
12 authority to investigate or to arrest, but that's it. That
13 directive means nothing and is not relevant to this case.
14 His authority -- he has no authority to make. Not only that,
15 it's my understanding that Mr. Chandler was represented by
16 counsel at that time who told him to go to work the next
17 morning. So I just object to that coming in. It's just --
18 he has no authority to make that.

19 MS. FILO: Your Honor, it's an active crime scene
20 at that point, and he has every authority to tell people who
21 can and cannot enter an active crime scene.

22 MR. MADDEN: Not when you take them outside and
23 they are free to leave. It is -- was it blocked off? I
24 mean, come on, crime scene?

25 MS. FILO: What do you mean, crime scene? That's a
26 crime scene. The police have --

27 MR. MADDEN: It wasn't marked off as a crime scene.

28 MS. FILO: It's a classroom. It's locked. He

1 spoke to the principal that night and told her --

2 MR. MADDEN: There is no evidence that Mr. Chandler
3 received any information, any directive from anybody at the
4 district or the school about not coming to work in the
5 morning, and that's why his attorney told him to go to work
6 in the morning.

7 THE COURT: And specifically, what did Officer
8 Pierce tell him after the interview?

9 MS. FILO: What he told him is: Do not go back
10 onto the campus. You should contact the principal in the
11 morning to get further instruction about what to do with your
12 employment, but do not go back onto campus.

13 THE COURT: Okay. Thank you. I'm going to give
14 this some thought. I will take it under submission. I won't
15 make any ruling without, you know, consulting with counsel,
16 but --

17 MR. MADDEN: In effect, the People are seeking to
18 get evidence of this order, this phantom order, from a person
19 who has no authority to make it, and asking the jury to draw
20 a negative inference that Mr. Chandler had some nefarious
21 reason for going to work the next morning. That's just not
22 the case and this should not be allowed.

23 THE COURT: Thank you. We'll be in recess until
24 tomorrow morning at 9:00 a.m. I will order counsel here and
25 Mr. Chandler here at 9:00 a.m. and we'll continue. Thank
26 you.

27 (Whereupon, the Court took the evening recess.)
28

1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)

4 I, JAMIE L. MIXCO, HEREBY CERTIFY THAT:

5 The foregoing is a full, true, and correct
6 transcript of the testimony given and proceedings had in the
7 above-entitled action taken on the above-entitled date; that
8 it is a full, true, and correct transcript of the evidence
9 offered and received, acts and statements of the Court, also
10 all objections of counsel, and all matters to which the same
11 relate; that I reported the same in stenotype to the best of
12 my ability, being the duly appointed and official
13 stenographic reporter of said Court, and thereafter had the
14 same transcribed into typewriting as herein appears.

15 I further certify that I have complied with CCP
16 237(a)(2) in that all personal juror identifying information
17 has been redacted if applicable.

19 Dated:

22 _____
23 Jamie L. Mixco, C.S.R.
Certificate No. 12708

24 ATTENTION:
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EXHIBIT 3

(Vol. 11)

TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

---o0o---

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

Plaintiff - Respondent,)

v.)

No. C1223754

CRAIG RICHARD CHANDLER,)

Defendant - Appellant.)

COPY

VOLUME 11

PAGES 936 - 1069

JULY 18, 2013

---o0o---

REPORTER'S TRANSCRIPT ON APPEAL
FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY

---o0o---

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: OFFICE OF THE ATTORNEY GENERAL
BY: KAMALA D. HARRIS,
Attorney General of the State
of California

FOR DEFENDANT-APPELLANT: In Propria Persona

---o0o---

DEFENDANT.

CASE NO. C1223754

---o0o---

JULY 18, 2013

— — — o o — — —

JAMIE L. MIXCO
C.S.R. No. 12708

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1 San Jose, California

July 18, 2013

2 PROCEEDINGS

3 THE COURT: Thank you, ladies and gentlemen.

4 Record will reflect all members of the jury are present, both
5 counsel are present, Mr. Chandler is in the courtroom.

6 And, Ms. Filo, your next witness.

7 MS. FILO: Thank you, Your Honor. The People call
8 Noemi Gonzalez.

9 NOEMI GONZALEZ,

10 Being called as a witness on behalf of the People,
11 having been first duly sworn, was examined and testified as
12 follows:

13 THE CLERK: For the record, could you please state
14 your full name and spell both for the record.

15 THE WITNESS: Noemi, N-o-e-m-i. Gonzalez,
16 G-o-n-z-a-l-e-z.

17 MS. FILO: Your Honor, if I might, I ask to move a
18 little closer to see if I could get the microphone a little
19 closer to --

20 THE COURT: Yes, please do so. If you could pull
21 your chair up a little closer to the microphone. Your voice
22 is soft. Good morning.

23 THE WITNESS: Good morning.

24 THE COURT: Most people that are asked to come to
25 court and testify as witnesses are nervous, so that's okay.

26 THE WITNESS: Yeah.

27 THE COURT: Okay. Ms. Filo is going to ask you
28 some questions. You just need to listen to the question and

1 make every effort to just answer what she's asking. Don't
2 give your answer until she's done with her question, even if
3 you know what she's going to be asking you.

4 THE WITNESS: Okay.

5 THE COURT: Okay? So that way two people are not
6 talking at the same time. If she's asks you a question that
7 calls for a yes or no response, and you go (nods head), she's
8 going to say: Does that mean yes? Or, if you go uh-huh,
9 she's going to say: Does that mean yes? So the easiest way
10 is just to say yes if it's yes or no because we're recording
11 what's being said. And finally, if you hear on of the
12 lawyer's say objection, don't answer the question. I will
13 let you know if you could answer it or not. Okay?

14 THE WITNESS: Okay.

15 THE COURT: Okay.

16 Direct.

17 MS. FILO: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. FILO:

20 Q. Good morning, Noemi.

21 A. Good morning.

22 Q. You are a little bit nervous about testifying?

23 A. Yes.

24 Q. You've never had to testify in court before?

25 A. No.

26 Q. Okay. So the judge explained kind of the rules of
27 testifying in court, and you and I talked for a few minutes
28 before you took the stand and I kind of gave you all of those

1 rules, too?

2 A. Yeah.

3 Q. Yes?

4 A. Yes.

5 Q. Sometimes it's easier to start talking and we'll get
6 through it. Okay?

7 Noemi, I want to ask you some questions about a
8 conversation you had with a young girl named Arleth?

9 A. Yes.

10 Q. Who is Arleth to you?

11 A. She's my cousin.

12 Q. Okay. How often do you see Arleth?

13 A. Um, I used to see her, like, every day because she used
14 to live with us, but she moved. So I kind of, like, see her,
15 like, four times a week sometimes. It depends.

16 Q. You said that you used to live together?

17 A. Yeah.

18 Q. Where was Arleth going to school when you all lived
19 together, do you know?

20 A. O.B. Whaley.

21 Q. So Arleth is about to start sixth grade; right?

22 A. Yes.

23 Q. And how old are you, Noemi?

24 A. I'm 15.

25 Q. Okay. So you are going into your sophomore year?

26 A. Yes.

27 Q. Okay. Noemi, I would like to ask you about a ti
28 Arleth was -- she was in fourth grade but had -- str

1 Do you know who Arleth's teacher was in third
2 grade?

3 A. In third grade? When that happened or --

4 Q. Yes.

5 A. Yeah, it was Mr. Chandler.

6 Q. Okay. Was there a time in fourth grade when Arleth came
7 to you and said: I want to talk to you a little bit about
8 Mr. Chandler?

9 A. No.

10 Q. Okay. Did you go to Arleth and say: I want to talk to
11 you about Mr. Chandler?

12 A. No.

13 Q. Okay. Did you have a conversation with Arleth about Mr.
14 Chandler?

15 A. Yes.

16 Q. I have my times wrong?

17 A. Yes.

18 Q. Okay. Why don't you tell me what you remember about
19 that conversation?

20 A. Okay. When that happened, about that -- in the news
21 that -- what he was doing, like, it was one day that we were
22 just sitting there, and then I -- we just started talking
23 about it, and she started telling me all of this stuff that
24 he would do -- he would make her do to him, and then -- yeah,
25 that's how she started telling me everything.

26 Q. Okay.

27 A. Yeah.

28 Q. So do you remember when that conversation was?

1 A. Not exactly.

2 Q. It was when there were some news articles and there was
3 in things on the television?

4 A. Yes.

5 Q. About Mr. Chandler being arrested?

6 A. After that, after that -- the news and everything, like,
7 I would ask her -- I was like: Did he ever do stuff to you?
8 She never told me anything. But after, like, a week or so,
9 like, we were just talking, and then she just started telling
10 me everything, and that's when I told my aunt and -- yeah.

11 Q. Okay. Up until that time, had you and Noemi -- I'm
12 sorry -- you and Arleth been pretty close?

13 A. Yeah.

14 Q. She would talk to you about stuff?

15 A. (Shakes head up and down.)

16 Q. Yes?

17 A. Yes.

18 Q. Okay. And you said it was almost a week after this was
19 on the news that Arleth came and talked to you?

20 A. Yes.

21 Q. Do you remember how that conversation started?

22 A. Not really. No.

23 Q. You talked to the police in this case; is that right?

24 A. Yes.

25 Q. Did you tell the police officer that the way Arleth
26 started this conversation was to say, "Noemi, if I tell you
27 something, am I going to get arrested"?

28 A. Yeah, yes.

1 Q. Is that how the conversation started?

2 A. Yes.

3 Q. So what did she -- she said, "Am I going to get
4 arrested"?

5 A. Yes, she thought that.

6 Q. Is that how this conversation began?

7 A. Well, okay, so we were -- it's because we were talking
8 about it and then she started telling me this stuff. And
9 then I asked her, I was like: Why didn't you tell me
10 nothing? She's like: Well, it's because I thought I would
11 get arrested for that. I was like: No, that couldn't
12 happen. And -- yeah. So she ended up telling me stuff.

13 Q. Okay. Noemi, you said that she sort of started telling
14 you what had happened with Mr. Chandler?

15 A. Yes.

16 Q. What did she tell you?

17 A. She told me at break -- at recess, when they have
18 recess, right, and at recess he would tell her to go and then
19 he would make her do stuff to him and then after he would
20 give her a lollipop. And I would, like -- that would
21 happen -- that happened, like, five or six times she said or
22 more. And -- yeah, she said that it wasn't only her, but it
23 was some other kids too. There was more than her.

24 Q. Did she describe what he was having Arleth do to him?

25 A. Yes.

26 Q. What did she say?

27 A. She said that he would close her eyes and that she
28 would -- he would put something in her mouth and she said it

1 was, like, hairy and, like -- and she would describe it, but
2 I don't -- okay. Do I have to describe it?

3 Q. Please.

4 A. And then she said that it tasted like pee and -- yeah.

5 Q. Okay. So she said it tasted like pee and it was hairy?

6 A. Yes.

7 Q. Did Arleth tell you why she -- did Arleth tell you that
8 she couldn't see what was happening?

9 A. Yes, because he covered her eyes when he would do that
10 stuff, when he would make her do that stuff to her.

11 Q. Did she tell you that she was actually able to peek?

12 A. Yeah.

13 Q. She was able to see something?

14 A. A little bit.

15 Q. Did you actually have her draw for you?

16 A. No.

17 Q. No? She just described it to you?

18 A. Yeah.

19 Q. Could you tell me anything else about what her
20 description was to you? You said hairy and it tasted like
21 pee. Did she give you any other description of what it
22 looked like or felt like?

23 A. Not that I remember.

24 Q. Okay. So you asked her why she didn't tell you this
25 stuff before?

26 A. Yes.

27 Q. And she told you because she thought she would get
28 arrested?

- 1 A. Yes.
- 2 Q. Did she tell you anything more about that?
- 3 A. No.
- 4 Q. Just thought she would get in trouble?
- 5 A. Yes.
- 6 Q. Noemi, is Arleth sophisticated?
- 7 A. What do you mean?
- 8 Q. I mean, she wouldn't know that she's not going to get in
- 9 trouble; right? That's something you had to tell her?
- 10 A. Yes.
- 11 Q. You had to tell her that if something bad happened to
- 12 her, it's not her fault and she's not going to get in
- 13 trouble?
- 14 A. (Shakes head up and down.)
- 15 Q. Is that something you had to tell her in this
- 16 conversation?
- 17 A. Yes.
- 18 Q. Does she tell you anything about how many times this
- 19 happened to her?
- 20 A. She said, like, five, six, or more times; five or six or
- 21 more.
- 22 Q. Did she tell you anything more about -- did she tell you
- 23 she was alone? Did she give you any other descriptions?
- 24 A. She said she was alone in the room with him.
- 25 Q. Did she tell you anything about what Mr. Chandler was
- 26 doing while this thing was in her mouth?
- 27 A. No. She said -- no, I don't remember.
- 28 Q. No? Or, you don't remember?

1 A. No, she didn't say anything.

2 Q. Okay. Do you -- did you tell the police officers that
3 Arleth had told you there would be moaning while this was
4 happening?

5 A. Yeah.

6 Q. Is that what she said?

7 A. Yeah.

8 Q. Noemi, how many conversations did you have with Arleth
9 about this subject?

10 A. It was, like, two times.

11 Q. Did both of those conversations happen before you talked
12 to the police?

13 A. Um-hum, yes.

14 Q. Do you remember where the first conversation took place?

15 A. Well, the first one, it was -- like, it wasn't, like, a
16 long conversation. It was, like, a short conversation, but
17 it was at my house and -- yeah.

18 Q. And where was the second conversation?

19 A. Um, it was at my mom's friend's house.

20 Q. How did that conversation occur?

21 A. We were in the sidewalk. We were, like, by the sidewalk
22 sitting because she was taking care of us, but we were just,
23 like, talking, and, yeah, that's how she started telling me
24 stuff.

25 Q. Okay. So you said you had a short conversation with
26 Arleth at your house?

27 A. Yeah.

28 Q. Did you do anything as a result of that conversation?

1 A. No.

2 Q. Did you tell your aunt after?

3 A. Yes.

4 Q. So you did tell your aunt after that conversation?

5 A. Yes.

6 Q. That's Arleth's mom?

7 A. Yes.

8 Q. How long after that short conversation at your house was
9 this second conversation at your mom's friend's house?

10 A. I don't remember. It was a long time. It was more than
11 a week or two, yeah.

12 Q. But you think it was before you talked to the police?

13 A. Yes.

14 Q. After this short conversation you had at your house, you
15 said that you told your aunt?

16 A. Yes.

17 Q. How did you tell your aunt?

18 A. Um, well, I told her if she remembered about what
19 happened at the teacher and -- about the teacher, and then
20 she said yeah. And I started telling her what she told me
21 and she had to do something about it. So, yeah, she did.
22 She called the police and stuff.

23 Q. Did that conversation take place over the phone or in
24 person?

25 A. Over the phone.

26 Q. So as soon as -- is it accurate, that as soon as you had
27 that conversation with Arleth, you picked up the phone and
28 called your aunt?

1 A. Yes.

2 Q. You knew this was something that you needed to tell
3 someone?

4 A. Yes.

5 Q. Did Arleth specifically identify what she saw as a guy's
6 thing?

7 A. Did she, like, see it or -- what do you mean?

8 Q. When she was talking to you, did she say: What I saw
9 was a guy's thing?

10 A. Yes.

11 Q. She used those words?

12 A. She didn't -- it was like that. She said -- well, she
13 just described how it looked, how it, like, taste, and how
14 it, like, felt right inside her mouth, but she said she could
15 only see a little bit of it. She couldn't see completely all
16 of it. So, yeah, she was -- thought it was it.

17 Q. Did Arleth even know the word "penis"?

18 A. No.

19 Q. So in the police report, if it says "a guy's thing," is
20 that -- are those your words or those her words?

21 A. No. Her words.

22 Q. Noemi, you said that you had a second conversation with
23 Arleth at your mom's friend's house?

24 A. Yes.

25 Q. Could you remember anything more about that
26 conversation? Was that conversation longer than the first
27 one?

28 A. Yes.

1 Q. And do you remember anything more about what Arleth said
2 in that conversation?

3 A. No.

4 Q. Nothing that was strikingly different than what she told
5 you the first time?

6 A. No.

7 Q. After the police were called and you talked to the
8 police in this case, have you had any other conversation with
9 Arleth about what happened with Mr. Chandler?

10 A. Yeah, we did, but I just told her, like, I was there for
11 her, like, you know, because she was, like, crying and stuff
12 after that happened. But that's, like, only -- like, I only
13 tried to help her. That's, like, the only conversation we
14 had after that.

15 Q. So she hasn't given you any more details about what
16 happened?

17 A. No.

18 Q. Has she talked to you about the court process or
19 anything like that?

20 A. No, not really.

21 Q. Hasn't talked to you about having to come to court or
22 anything?

23 A. No. Only if I asked her. But, no, she didn't tell me
24 about that.

25 Q. And what you have told her is: I'm there for you and
26 it's going to be okay?

27 A. Yes.

28 MS. FILO: I think that's all I have, Your Honor.

1 THE COURT: Thank you.

2 Cross-examination?

3 MR. MADDEN: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. MADDEN:

6 Q. Do I have the correction of your first name? Correct
7 when I say Noemi?

8 A. Yes.

9 Q. All right. Noemi, my name is Brian Madden. I'm Mr.
10 Chandler's lawyer. I'm going to ask you some questions, and
11 it's important that you understand the questions that I ask
12 before you answer it. Okay?

13 A. Okay.

14 Q. So if I ask you a question and it's a confusing
15 question, or you don't understand the question, I don't want
16 you to answer that. Okay? I want you instead to tell me: I
17 don't understand the question, and then I'll try to use other
18 words so that you understand the question. Okay?

19 A. Okay.

20 Q. On the other hand, if I ask you a question and you
21 answer, I'm going to assume that you understood the question.
22 Okay?

23 A. Okay.

24 Q. Is that fair?

25 A. Yes.

26 Q. Okay. I'm going to try to do one other thing. I have
27 trouble with it sometimes. I want to try to wait until
28 you've given your whole answer before I ask another question.

1 A. Okay.

2 Q. All right. And I would like you to do the same thing.
3 Okay?

4 A. Okay.

5 Q. The reason for that is that the lady in front of you is
6 a court reporter. She has to write down every word that I'm
7 saying and every word that you're saying. And if we're
8 talking at the same time, she can't get everything down.
9 Okay?

10 A. Okay.

11 Q. So if I asked you to "wait" or to "stop," that's why I'm
12 doing it. Okay?

13 A. Okay.

14 Q. I want to tell you that I'm guilty of doing the same
15 thing sometimes, so don't feel bad about it. Okay?

16 A. Okay.

17 Q. All right.

18 So Arleth is your cousin?

19 A. Yes.

20 Q. Am I correct, that Arleth's mother is your mother's
21 sister?

22 A. Yes.

23 Q. Okay. And I'm not sure that I heard your testimony
24 correctly, but did you state that at one time you lived
25 either with Arleth's family or that you lived next to them?
26 I didn't understand.

27 A. No. She lived with us.

28 Q. Okay. Just Arleth, herself?

1 A. No, and my aunt and her sister and her dad.

2 Q. The family lived together?

3 A. Yes, they lived together.

4 Q. All right. For how long?

5 A. Um, it was for years, but I don't remember how many
6 years. It was for years.

7 Q. All right. So when this event about your cousin
8 speaking with you occurred, she was nine?

9 A. Yes.

10 Q. Okay. And how old do you think that she was when she
11 didn't live with your family anymore?

12 A. Um, I don't remember. I don't know.

13 Q. Could you give me an estimate?

14 A. Like, ten; nine or ten. I don't really know. I don't
15 even know how old she is. No, I don't remember.

16 Q. All right. When she was in the third grade at O.B.
17 Whaley School, was her family living with your family?

18 A. Yes.

19 Q. Okay. When she was in the fourth grade, was her family
20 living with your family?

21 A. Yes.

22 Q. You know what my next question is; right? When she was
23 in the fifth grade --

24 A. Oh, no.

25 Q. Okay. So her family had their own place sometime in her
26 fifth grade?

27 A. Yes.

28 Q. Was that house near your house?

1 A. It's -- yeah. It's not that close, but it's not, like,
2 really far, far.

3 Q. Is it a place where you could walk?

4 A. No.

5 Q. You have to drive?

6 A. Yeah.

7 Q. All right. You probably could walk but you don't;
8 right?

9 A. Yeah.

10 Q. All right. So, then, would I be correct in assuming
11 that you were actually very close to Arleth?

12 A. Yes.

13 Q. She looks up to you?

14 A. Yes.

15 Q. All right. Now, do you remember seeing TV coverage
16 about a teacher being arrested at O.B. Whaley School?

17 A. Yes.

18 Q. And do you remember when that was? When you saw that TV
19 coverage?

20 A. No.

21 Q. Did it appear to be right about the time that the
22 teacher was arrested?

23 A. Yes.

24 Q. Okay. And it was on the TV a lot; right?

25 A. Yes.

26 Q. Maybe every day?

27 A. Yes.

28 Q. All right. And when did you learn that your cousin had

1 been a former student of the man who was arrested, Mr.
2 Chandler?

3 A. Um, like, after the second conversation, that's when I
4 knew that she was affected by that, too.

5 Q. No, I didn't -- maybe you misunderstood the question, or
6 maybe I didn't ask it properly, but let me try it again.

7 Your mother, did you see your mother and her
8 sister, Arleth's mother, talk about the TV coverage?

9 A. Yes.

10 Q. Did you see and watch the TV coverage together? That
11 is, you and Arleth's mother and your mom?

12 A. Not all together. But, yeah, we would sometimes --
13 like, we would all watch it.

14 Q. And you found that very disturbing; right?

15 A. Yes.

16 Q. Of course. And were you aware that Arleth's mother was
17 questioning Arleth every day about whether or not the teacher
18 had done anything to her?

19 MS. FILO: Objection, Your Honor. Calls for
20 speculation.

21 MR. MADDEN: I asked if she was aware.

22 THE COURT: Well --

23 MR. MADDEN: I'm sorry. Let me rephrase.

24 THE COURT: You are assuming facts that are not in
25 evidence at this point, so I will sustain the objection.

26 BY MR. MADDEN:

27 Q. Did you ever hear, or were you present at any time when
28 Arleth's mother was questioning Arleth about whether Mr.

1 Chandler did anything to her?

2 MS. FILO: Objection, Your Honor. Calls for
3 hearsay.

4 MR. MADDEN: No. I asked her if she was present.

5 THE COURT: What's your point?

6 MR. MADDEN: I'm just asking if she was present
7 when that conversation occurred.

8 THE COURT: I'm going to sustain the objection.
9 Calls for hearsay.

10 MR. MADDEN: It doesn't, Your Honor. I'm asking --

11 THE COURT: Well, I disagree. Objection is
12 sustained.

13 MR. MADDEN: The next question might ask for
14 hearsay, but that one doesn't.

15 THE COURT: You could ask a question.

16 MR. MADDEN: All right.

17 THE COURT: Actually, why don't you approach.

18 (Whereupon, there was a discussion at the bench.)

19 THE COURT: Objections are sustained. He's going
20 to ask another question.

21 MR. MADDEN: All right.

22 BY MR. MADDEN:

23 Q. Do you remember the day that you called Arleth's mother
24 to tell her what Arleth had told you?

25 A. No.

26 Q. I believe you testified earlier that you got on the
27 phone and called Arleth's mother after you spoke with Arleth?

28 A. Yes.

1 Q. Do you remember what day that was?

2 A. You mean the date or --

3 Q. No. I'm asking -- not asking you the date. You
4 remember the day?

5 A. Yeah. I thought it was the date, that's why I said no.

6 Q. Okay. I won't expect you to know the date?

7 A. Okay.

8 Q. But I would like to ask you if you could give me your
9 best estimate of how many days it was from when you first saw
10 TV coverage and you made the call to Arleth's mother?

11 A. I don't really remember. Like, more than two -- one or
12 two weeks. More than one or two weeks.

13 Q. Okay. This happened some time ago? More than a year
14 and a half ago?

15 A. Yes.

16 Q. I don't want to be unfair and ask you to give a specific
17 time. You're just giving your best estimate; right?

18 A. Yes.

19 Q. Approximately one to two weeks later?

20 A. Yes.

21 Q. Okay. Fair enough.

22 Now, when you called Arleth's mother, it was after
23 a second conversation that you had with Arleth about Mr.
24 Chandler; correct?

25 A. No.

26 MS. FILO: Objection. Misleads the testimony.

27 THE COURT: I'm going to allow the answer to
28 remain. Her answer was "no."

1 BY MR. MADDEN:

2 Q. Okay. Maybe I didn't understand your testimony. I
3 thought you testified that you had two separate conversations
4 with Arleth on different days about Mr. Chandler?

5 A. Yes.

6 Q. That is correct?

7 A. Yes.

8 Q. And the first conversation -- who was there the first
9 conversation?

10 A. It was just me and her.

11 Q. Okay. Where were you when you had that conversation?

12 A. At my house.

13 Q. All right. How did she -- she was at your house because
14 she was living there or --

15 A. Yeah.

16 Q. Okay.

17 A. Yes.

18 Q. All right. What did she tell you during that
19 conversation?

20 A. She started -- well, she didn't tell me what she told me
21 in the second conversation, but she -- okay. Do I keep on
22 going?

23 Q. Go ahead. Finish your answer.

24 A. But she didn't tell me, like, everything completely.

25 Q. All right. What did she tell you?

26 A. She told me that -- she just told me that he would cover
27 her eyes and he would, like, put stuff in her mouth, but she
28 didn't really describe it until the second conversation. She

1 just told me everything.

2 Q. Okay. When you had that conversation, was she crying?

3 A. No.

4 Q. Was she upset?

5 A. Yeah, she was kind of upset.

6 Q. All right. And were you crying?

7 A. No.

8 Q. Did you ever tell her anything like: Arleth, I know
9 something more happened. You have to tell me?

10 A. Yes.

11 Q. You started telling her that at the very first
12 conversation; right?

13 A. Yes.

14 Q. You also told her things like that in the second
15 conversation; right?

16 A. Yes.

17 Q. You were trying to help; right?

18 A. Yes.

19 Q. And you probably told her: Arleth, I know something
20 happened. You have to tell me?

21 A. Yes.

22 Q. Do you remember the matter being on the TV every day for
23 at least a week?

24 A. Yes.

25 Q. All right. Do you remember ever seeing -- strike that.
26 Strike that means I'm going to start over.

27 Do you remember Arleth giving you a letter from the
28 school about Mr. Chandler?

1 A. Yes.

2 Q. And do you remember when or what day she gave you that
3 letter?

4 A. No.

5 Q. Was that -- if you remember, do you think that was on
6 one of the days that you had a conversation with Arleth, one
7 of the two?

8 A. Um, I don't remember that. I don't think so. No, I
9 don't remember.

10 Q. The day you had the long conversation with Arleth about
11 the details that you testified about this morning, did you
12 get the letter on that day?

13 A. No.

14 Q. Did you read this letter?

15 A. Yes.

16 Q. And was the letter in English or Spanish?

17 A. It was --

18 Q. Or both?

19 A. It was both.

20 Q. Okay. And it was all about Mr. Chandler; correct?

21 A. Yes.

22 Q. The school was investigating?

23 A. Yes.

24 Q. That he had been placed on leave and he had been
25 arrested?

26 A. Yes.

27 Q. All right. The day of the second conversation, I
28 believe those present were you and Arleth and a woman who was

1 taking care of you?

2 A. No. She was inside the house.

3 Q. What was her name?

4 A. Claudia.

5 Q. Could you spell that, please?

6 A. C-l-a-u-d-i-a.

7 Q. Okay. And did she have a nickname?

8 A. No.

9 Q. Okay. Was she a relative of your family?

10 A. She's a friend of my mom.

11 Q. Okay. And you were at Claudia's house?

12 A. Yes.

13 Q. And was she basically babysitting you and Arleth?

14 A. Yes.

15 Q. Anybody else?

16 A. And my cousins and my brother.

17 Q. Okay. And was she present during your conversation with
18 Arleth?

19 A. No.

20 Q. You said she was in the house?

21 A. Yes.

22 Q. So your conversation with Claudia [sic] was outside?

23 A. With Claudia or Arleth?

24 Q. I'm sorry. Thank you for correcting me. With Arleth?

25 A. Yes, it was outside.

26 Q. On a curb or something?

27 A. Yeah. It was like the sidewalk.

28 Q. Okay. Is this where you read the letter?

1 A. No.

2 Q. Okay. Now, when during the week or two that you were
3 asking -- let me withdraw that.

4 Were there only two days that you asked your cousin
5 Arleth about Mr. Chandler?

6 A. Yes.

7 Q. There were -- you didn't talk to her about it any other
8 days during that week or two?

9 A. No.

10 Q. Okay. So on the day that -- on the second day at
11 Claudia's house, you were successful in getting Arleth to
12 speak with you; right?

13 A. Yes.

14 Q. You had not been successful the first time? At least
15 you didn't get very much information; right?

16 A. No.

17 Q. But after the first time, you were convinced in your
18 head that she had been sexually molested by Mr. Chandler;
19 right?

20 A. Yes.

21 MS. FILO: Objection, Your Honor. Relevance.

22 THE COURT: Sustained.

23 MS. FILO: Answer be stricken, please.

24 THE COURT: If there was an answer, I will strike
25 it.

26 BY MR. MADDEN:

27 Q. Would it be fair to state that on the second day, you
28 were pushing her a lot more than you were on the first day?

1 A. Yes.

2 Q. You remember speaking with a Det. Pierce at your school?

3 A. Yes.

4 Q. I think you only spoke with Det. Pierce one time;
5 correct?

6 A. Yes.

7 Q. And if you remember, would that have been on or about
8 January 17th?

9 A. I don't remember.

10 Q. Was it about a week after the matter had first been on
11 TV?

12 A. Yes.

13 Q. Okay. And Det. Pierce asked you a number of questions;
14 right?

15 A. Yes.

16 Q. Some of those questions included asking you what Arleth
17 told you; right?

18 A. Yes.

19 Q. And he also asked you what you told Arleth; correct?

20 A. Yes.

21 Q. All right. Now, you didn't tell him everything that you
22 told Arleth, did you?

23 A. Well, he told me to tell him everything, so I did.

24 Q. So -- all right.

25 Do you remember Det. Pierce asking you how many
26 times it happened?

27 A. No.

28 Q. Do you remember telling Det. Pierce in response to that

1 question: She said, like -- well, she told me that one
2 day -- one day it was --

3 MS. FILO: Objection, Your Honor. Calls for
4 hearsay. May we approach?

5 THE COURT: Yes.

6 (Whereupon, there was a discussion at the bench.)

7 THE COURT: I believe that the next question is to
8 see if she -- it will help her recall her recollection. I'm
9 not sure if somebody has a handy, clean copy.

10 MR. MADDEN: If Ms. Filo does, I will be happy to
11 do that. If not, I marked off my writing on the page, Your
12 Honor, with stickies. There are some Sharpie marks, but
13 it's -- she could read it.

14 THE COURT: Ms. Filo -- first, I guess you should
15 ask the question.

16 MR. MADDEN: All right.

17 BY MR. MADDEN:

18 Q. Noemi, if I were to show you a transcript of the
19 conversation that you had, the recorded conversation that you
20 had with Det. Pierce, do you think that might help you
21 remember what you told Det. Pierce?

22 A. Yes.

23 Q. Okay.

24 MR. MADDEN: May I approach, Your Honor?

25 THE COURT: Yes. Thank you.

26 BY MR. MADDEN:

27 Q. All right. Noemi, I'm going to show you a paper that
28 says at the bottom "Reporter's transcript of audio CD."

1 Lower right-hand corner is page 9, and you don't have to read
2 the whole page. I'm going to give you the lines I want you
3 to read.

4 MR. MADDEN: This isn't matching up, Your Honor.
5 It might be on page 8, Ms. Filo. Your Honor, there is a
6 pagination difference. Mine may run together, so it's out of
7 sequence. I'm going to have to use this one. I don't know
8 what page it is in the transcript, but let's try this.

9 BY MR. MADDEN:

10 Q. So I'm reading now from a page from the -- again, the
11 reporter's transcript of the audio CD of Noemi Gonzalez. I'm
12 referring to page -- it's actually page 8. And, Noemi, what
13 I would like you to do is read -- I'm going to point, I
14 apologize. I'm going to ask you to read from line 17, which
15 has the words "Det. Pierce," and then read down to 22; 17 to
16 22. Okay?

17 A. In my mind or --

18 Q. Just read it to yourself.

19 A. Okay.

20 Q. Then -- take your time, and then when you are finished,
21 just let me know and I'll ask you some questions.

22 A. Okay.

23 Q. Okay. All right.

24 Now, do those words help you remember how many
25 times you told Det. Pierce this happened?

26 A. Yes.

27 Q. And how many times did you tell Det. Pierce it happened?
28 Two; right?

1 A. Yes.

2 Q. All right. Not five or six; right?

3 A. Nah-uh.

4 Q. Okay. Now, at one point in the conversation between you
5 and Arleth, the second conversation, after she told you all
6 of these things, you asked her in effect: Did he tell you
7 not to tell anybody?

8 A. No, I didn't ask her that.

9 Q. She didn't say that he asked her that; right?

10 A. That he asked her that?

11 Q. I think I confused you. I'm going to go back and start
12 again. One of us is confused. It may be me.

13 Did Arleth tell you that Mr. Chandler never told
14 her not to tell?

15 A. No.

16 Q. She didn't say that?

17 A. No.

18 Q. I'm going to show you this transcript again.

19 MS. FILO: Objection, Your Honor, to the form of
20 the question. Actually, there is no question.

21 THE COURT: I'll sustain the objection and
22 approaching at this point.

23 MR. MADDEN: All right.

24 THE COURT: She basically said no.

25 BY MR. MADDEN:

26 Q. Did you ever ask Arleth if Mr. Chandler ever said
27 anything to her about not telling anyone?

28 A. Like, he would tell her: Don't tell anyone? Yeah.

1 Q. I'm asking you if you asked that question?

2 A. That's what I'm asking you. You asked that?

3 Q. Tell me again what you understand the question to be.

4 A. You asked if he ever told her to not tell anyone.

5 Q. No, no, no. I'm asking if Arleth told you anything
6 about what Mr. Chandler said?

7 A. To her?

8 Q. Yes.

9 A. Well, I don't remember. I don't remember that.

10 Q. You don't remember that?

11 A. Yeah, I don't remember.

12 Q. Okay. I want you to --

13 MR. MADDEN: Now it's time to approach, Your Honor.

14 THE COURT: If you read a document, do you think
15 that would help you remember?

16 THE WITNESS: Yeah.

17 THE COURT: Okay. You may.

18 MR. MADDEN: Thank you, Your Honor.

19 BY MR. MADDEN:

20 Q. It's the same transcript, Noemi, but this time I'm going
21 to have you look at page 8, line -- lines 8, 9, and 10, just
22 those three lines. Take your time and you could read that.
23 Let me know when you are done.

24 Okay. Does that help you remember?

25 A. Yeah.

26 Q. All right. In fact, she told you that Mr. Chandler
27 never told her not to tell; right?

28 A. Right.

1 Q. Okay. You had to help Arleth with the words to describe
2 what Mr. Chandler did; right?

3 A. Yes.

4 Q. You had to suggest words to her; right?

5 A. Yes.

6 Q. And it would be like: Did he do this or did he do that?

7 A. Yes.

8 Q. All right. For example, you asked her, "Was he
9 moaning;" right?

10 A. Yes.

11 Q. All right. She didn't volunteer that. She said that
12 after you asked her if he was moaning; right?

13 A. Yes.

14 Q. Okay. Because there is no way a little girl would
15 understand what moaning meant; right?

16 A. Yes.

17 Q. All right. And you had to help her by using the word
18 "hairy;" right?

19 A. No, she said that.

20 Q. You didn't ask her: Was there hair around it, or was it
21 hairy, or did you see hair?

22 MS. FILO: Objection. Asked and answered and
23 compound.

24 THE COURT: Okay. I will sustain the compound
25 objection.

26 MR. MADDEN: On the compound basis?

27 THE COURT: Yes.

28 MR. MADDEN: I agree with that. Thank you, Your

1 Honor.

2 BY MR. MADDEN:

3 Q. Did you help her by asking her, "Did you see hair"?

4 MS. FILO: Objection. Asked and answered. The
5 witness already testified exactly what the child told her.

6 THE COURT: Overruled. You may answer that
7 question.

8 THE WITNESS: Do I answer it?

9 THE COURT: Yes, you could answer if you asked that
10 question.

11 THE WITNESS: No. She told me that. I didn't ask
12 her.

13 BY MR. MADDEN:

14 Q. Okay. Did Arleth have any eyesight problems when she
15 was in the third grade?

16 A. Like, does she wear glasses?

17 Q. Did she have trouble seeing?

18 A. Well, she wears glasses.

19 Q. Do you know if she was wearing glasses in the third
20 grade?

21 A. Yeah. Yeah, she was, I think.

22 Q. Are you certain of that?

23 A. I'm not certain. I think.

24 Q. Okay. But before she got glasses, everyone kind of knew
25 that she had a very difficult time seeing; right?

26 MS. FILO: Objection, Your Honor. Calls for
27 speculation.

28 THE COURT: Sustained.

1 BY MR. MADDEN:

2 Q. Did you observe Arleth before she got glasses having a
3 difficult time seeing things?

4 A. Yes.

5 Q. What did you observe?

6 A. Well, she couldn't see that well. Like, she could see
7 close up, but not, like, far. She could see from close, but
8 not from far.

9 Q. She had to squint her eyes even to look at the TV,
10 didn't she?

11 A. Well, if it was far.

12 Q. Okay. Now, Arleth -- strike that.

13 Did you have to help Arleth when she was talking to
14 you about Mr. Chandler with a word to describe a man's penis?

15 A. Yes.

16 Q. And you asked her, "Was it a guy's thing;" right?

17 A. Yes.

18 Q. So that was your word, not hers; right?

19 A. No, it was hers.

20 Q. But you asked her, "Was it a guy's thing;" right?

21 A. Yes.

22 Q. All right. Do you know at that time what her word was
23 for the male penis?

24 A. It was a guy's thing. She didn't know the word "penis."

25 Q. I understand that. Did she ever use the word "weenie"?

26 A. Yes.

27 Q. That was her word to describe a guy's thing, wasn't it?

28 A. No, it was -- she also said a "weenie." She was trying

1 to describe it, but she said a "weenie" or "a guy's thing."
2 She said both of those things.

3 Q. Did you have any discussion with Arleth about Mr.
4 Chandler humping her?

5 A. I don't remember.

6 Q. If I were to show you the transcript, would it help you
7 remember whether or not Arleth told you that?

8 A. Yeah.

9 MS. FILO: Objection, Your Honor. May we approach
10 again?

11 THE COURT: Yes.

12 (Whereupon, there was a discussion at the bench.)

13 THE COURT: Mr. Madden, as I understand it, you are
14 going to reask your last question, so that it's clear for
15 both sides.

16 MR. MADDEN: Thank you, Your Honor.

17 BY MR. MADDEN:

18 Q. Noemi, did you tell Det. Pierce during your interview
19 with him that Arleth told you that Mr. Chandler humped her?

20 A. I don't remember.

21 Q. All right. So if I showed you this transcript, would it
22 help you remember whether or not you said that to Det.
23 Pierce?

24 A. Yes.

25 Q. Yes?

26 A. Yes.

27 Q. Okay. I'm sorry. Old ears.

28 MR. MADDEN: May I approach again, Your Honor?

1 THE COURT: Yes.

2 BY MR. MADDEN:

3 Q. So, now I would like to show you page 7 of the same
4 transcript, and I would like you to read lines 21, 22, 23,
5 24, 25 and the first line on the next page. Okay? See where
6 I'm pointing? 21 through one. Okay? Sorry to point.
7 Please take your time.

8 Are you done?

9 A. Yes.

10 Q. Okay. I'm going to come get the transcript.

11 Does that help you remember whether or not you said
12 that to Det. Pierce?

13 A. Yes.

14 Q. And, in fact, you did say that to Det. Pierce; right?

15 A. Yes.

16 Q. All right. Thank you.

17 At some point in your conversation with Arleth,
18 that is the second conversation we're talking about, you
19 asked Arleth to draw you a picture; right?

20 A. No.

21 Q. You never asked Arleth to draw you a picture?

22 A. Um, not that I remember.

23 Q. Okay. Did you ever tell Det. Pierce that you asked
24 Arleth to, like, draw me a picture?

25 A. Did I ask her that?

26 Q. Did you tell Det. Pierce that?

27 A. I don't remember.

28 Q. All right.

1 MR. MADDEN: May I approach, Your Honor?

2 THE COURT: Would it help you remember to look at
3 the transcript?

4 THE WITNESS: Yeah.

5 THE COURT: Yes.

6 BY MR. MADDEN:

7 Q. At this time, I would like you to look at page 8, lines
8 20 through 22. Just read those to yourself. Make sure I
9 have the right ones. I'm sorry. 20, 21, and 22.

10 A. Yes.

11 Q. Okay. Does that help you remember whether or not you
12 said that to Det. Pierce?

13 A. Yes.

14 Q. You did tell him that you asked her to draw you a
15 picture? You remember that now; right?

16 A. Yes.

17 Q. What did you do with that picture?

18 A. But because we were in the sidewalk, so there was, like,
19 a little stick, and I told her to draw it for me, and then
20 she just -- like, she didn't really -- you can't draw on the
21 sidewalk with the stick. So she tried to, like, drawing,
22 but -- yeah.

23 Q. Like an imaginary drawing?

24 A. Yes.

25 Q. Why did you ask her to draw a picture?

26 A. Because I wanted to make sure it was what I thought it
27 was.

28 Q. What you thought it was?

1 A. Yes.

2 Q. But she didn't know what it was; right?

3 A. No. She's a little girl.

4 Q. Right. Okay. What did you remember about the drawing,
5 the imaginary drawing?

6 A. Well, it looked like a penis.

7 Q. I'm sorry?

8 A. It looked like a penis.

9 Q. It looked like a penis?

10 A. Yes.

11 Q. An erect penis?

12 A. A what?

13 Q. An erect penis? Do you know what that means?

14 A. No.

15 Q. All right. A penis that was hard?

16 A. No. I just know it looked like a penis.

17 Q. Could have been?

18 A. Yes.

19 Q. Okay. So you earlier testified that -- strike that.

20 So this second conversation was really a
21 conversation where you were more aggressive and you were
22 pushing her to tell you more information; right?

23 MS. FILO: Objection, Your Honor. Asked and
24 answered.

25 MR. MADDEN: It has been --

26 THE COURT: It has been discussed.

27 MR. MADDEN: But not this specific question.

28 MS. FILO: Exact words have been used before.

1 THE COURT: It's --

2 MR. MADDEN: If it has --

3 THE COURT: Hold on, Counsel. Quit arguing.

4 You may answer the question.

5 THE WITNESS: Again?

6 THE COURT: Yes.

7 THE WITNESS: What was your question again?

8 MR. MADDEN: Madam Court Reporter, may I impose on
9 you?

10 (Whereupon, the record was read.)

11 THE WITNESS: Yes.

12 BY MR. MADDEN:

13 Q. It wasn't a situation where you were just having a
14 casual conversation and she started talking about Mr.
15 Chandler?

16 A. No.

17 MR. MADDEN: I think I'm done, Your Honor. I need
18 to check my list.

19 BY MR. MADDEN:

20 Q. Did you draw anything for her?

21 A. No.

22 Q. You didn't help her by drawing anything?

23 MS. FILO: Objection, Your Honor.

24 BY MR. MADDEN:

25 Q. To see and ask her: Did it look like this?

26 MS. FILO: Asked and answered.

27 THE COURT: Sustained.

28 ///

1 BY MR. MADDEN:

2 Q. Did Arleth tell you that she was biting the thing in her
3 mouth?

4 A. I don't remember.

5 Q. If I showed you the transcript, would -- and you saw the
6 words of your statement to Det. Pierce, would it perhaps help
7 you remember whether or not Arleth told you that?

8 A. Yes.

9 MR. MADDEN: I'm almost there, but may I approach?

10 THE COURT: So we're clear, you're not being shown
11 something to remind you what Arleth told you, but what you
12 remember what you told Officer Pierce.

13 MR. MADDEN: Okay. Thank you, Your Honor.

14 THE COURT: Welcome.

15 BY MR. MADDEN:

16 Q. I would like you to read from page 7, lines 6, 7 and 8.
17 Read these three lines here: 6, 7, and 8. Take your time
18 here.

19 Does that help you remember?

20 A. Yes.

21 Q. And you did tell Pierce, Det. Pierce, that Arleth was
22 biting the thing in her mouth?

23 A. Yes.

24 Q. Okay.

25 MR. MADDEN: Thank you, Your Honor. I have no
26 further questions.

27 THE COURT: Redirect, Ms. Filo?

28 ///

REDIRECT EXAMINATION

1 BY MS. FILO:

2 Q. Noemi, you had three conversations about this topic, am
3 I correct? One at your house, one at Claudia's house, and
4 one with Det. Pierce; is that right?

5 A. Yes.

6 Q. Are those three conversations distinct in your head?
7 Does that make sense? Like, do you remember what information
8 you got from conversation one versus two versus three?
9

10 MR. MADDEN: Objection. Compound question.

11 THE COURT: Overruled. You may answer the
12 question. Did you understand the question?

13 THE WITNESS: No. I was going to ask her.

14 BY MS. FILO:

15 Q. Are you clear about what information you got in
16 conversation one versus conversation two versus conversation
17 three?

18 A. Yes.

19 Q. You remember exactly what information you got in each
20 conversation?

21 A. Not exactly, but I remember parts of it, yeah.

22 Q. Okay. So there are parts that you remember getting, but
23 otherwise the information goes like this? It --

24 A. Yes.

25 Q. -- combines; is that right?

26 A. Yes.

27 Q. Okay. Was it important to you in any way to remember,
28 well, I got that piece of information in conversation one,

1 and that conversation -- and that piece of information in
2 conversation two? Did it matter?

3 A. Yes.

4 MR. MADDEN: Objection. Compound question.

5 THE COURT: Although it is compound, her answer was
6 yes. If you could clear it up.

7 MS. FILO: Okay.

8 BY MS. FILO:

9 Q. Why would it matter to you which conversation you got
10 the information from?

11 A. Where would it matter?

12 MR. MADDEN: Objection. She never said it did
13 matter.

14 THE COURT: She said yes. She's trying to clear it
15 up, so if you could --

16 THE WITNESS: Where it mattered or why it mattered?

17 BY MS. FILO:

18 Q. Yeah. I mean, I guess I'm trying to figure out why
19 would it make any difference to you what conversation this
20 information came from?

21 A. Because I wanted to find out what was -- what happened
22 to her.

23 Q. Okay. So you're just trying to get all of the
24 information?

25 A. Yes.

26 Q. It doesn't make any difference to you whether you got
27 that information in conversation one or conversation two?

28 A. No.

1 Q. No, it didn't matter to you; right?

2 A. No.

3 Q. Because you're just a cousin trying to figure out what
4 happened?

5 A. Yes.

6 Q. Okay. The second conversation you had with Arleth, you
7 said you don't remember exactly how close in time it happened
8 to the first conversation; is that correct?

9 A. Yes.

10 Q. But you do believe it was prior to the police being
11 called?

12 A. What do you mean?

13 Q. You said that you picked up the phone -- after the first
14 conversation with Arleth, you picked up the phone, you called
15 your aunt and said there is something I need to tell you?

16 A. It was the second conversation, not the first. It was
17 the second conversation I called my aunt. The first
18 conversation was at my house. My aunt was there, but I
19 didn't really tell her anything. I was -- like, I wanted to,
20 like, figure out more. I was going to ask her more stuff.
21 And then, like, the second conversation, that's when I asked
22 her and I made her tell me everything, and that's when I
23 called my aunt, after that.

24 Q. Okay. So it wasn't after the first conversation that
25 you called your aunt?

26 A. No.

27 Q. It was after the second conversation?

28 A. Yes.

1 Q. And you don't remember how close in time those things
2 happened?

3 A. No.

4 Q. Okay. So, Noemi, you got a lot of questions by Mr.
5 Madden that you were putting words in Arleth's mouth; that
6 you were telling her what to say?

7 MR. MADDEN: Objection, Your Honor. That's not a
8 question. It's a speech.

9 THE COURT: Okay. If you'd rephrase.

10 MS. FILO: Sure.

11 BY MS. FILO:

12 Q. You were asked, you know, isn't it true that you -- you
13 asked her to -- whether it was hairy; right?

14 A. Yes.

15 Q. And you said: No. She told me that?

16 A. Yes.

17 Q. You said that she used the word, "guy thing"?

18 A. Yes.

19 Q. You didn't give her that word?

20 MR. MADDEN: Objection. That wasn't her testimony.
21 She said she did and she said it --

22 THE COURT: Mr. Madden, just state your legal
23 objection. If you could rephrase it. It's sustained.

24 MR. MADDEN: I apologize, Your Honor. Misstates
25 the evidence.

26 THE COURT: Okay. If you'd reask the question.

27 MS. FILO: Sure.

28 ///

1 BY MS. FILO:

2 Q. Did she tell you "it was a guy's thing"?

3 A. Yes.

4 Q. She used those words?

5 A. Yes.

6 Q. Did you give her those words to feedback to you?

7 A. Um, I asked her -- I was -- like, I was asking her
8 questions; right? And I was like: Oh, so is it like a guy's
9 thing? She's like: Yeah, a guy's thing. She was saying
10 that, and she -- I couldn't really, like, get what she was
11 saying at first, so I was like: Could you describe it more?
12 She's like: Yeah. It's like a guy's thing, like a wee-wee.
13 That's what she said.

14 Q. Okay. Noemi, at the time of these conversations, you
15 were a little girl too? You were 13?

16 A. Yes.

17 Q. Mr. Madden asked you what an erect penis was and you
18 didn't know the answer to that?

19 A. No.

20 Q. Okay. You got some questions about the news coverage,
21 what was on the television; right?

22 A. Yes.

23 Q. Do you remember what was on the television? What the
24 content of those news reports were?

25 A. Well, I just remember that it was about Mr. Chandler and
26 that, like, he had done sexual things to other kids and stuff
27 like that.

28 Q. But you didn't know what those sexual things were, did

1 you?

2 A. No. They never put it up on the TV, so I never knew.

3 Q. Okay. So it's not like the news said that Mr. Chandler
4 had been touching children?

5 A. No.

6 Q. Or had been undressing in front of children? There were
7 no details in the news reports; right?

8 A. No, there wasn't.

9 Q. And when Arleth first talked to you about this, her
10 first concern was that she was going to get arrested?

11 A. Yes.

12 Q. She thought she was going to get in trouble for this?

13 A. Yes.

14 Q. Was part of your trying to get more information from her
15 because she was reluctant to tell you? She didn't want to
16 tell you?

17 MR. MADDEN: Objection. Speculation.

18 THE COURT: Overruled. It's a question. Was she
19 reluctant to tell you?

20 THE WITNESS: What do you mean "reluctant"?

21 BY MS. FILO:

22 Q. Was she scared?

23 A. Yeah.

24 Q. She was scared to give this information?

25 A. Yes.

26 Q. Noemi, you also got an awful lot of questions about the
27 conversation you had with Det. Pierce. Do you remember all
28 of those questions?

1 A. Yes.

2 Q. Do you remember how long your conversation was with Det.
3 Pierce?

4 A. Um, like, 15 minutes. I don't really remember because
5 when it was -- when I was going to go to class, they just
6 called me in and I went and -- yeah.

7 Q. Okay. Let me ask you this. Was your conversation with
8 Arleth longer or your conversation with Det. Pierce longer?

9 A. My conversation with Arleth.

10 Q. Okay. Do you remember that conversation with Det.
11 Pierce was recorded?

12 A. Yes.

13 Q. So would you -- do you know what the word "defer" means?

14 A. No.

15 Q. Okay. Would you agree that the recording says what you
16 said?

17 A. Yes.

18 MR. MADDEN: Your Honor, it doesn't matter what she
19 agrees.

20 THE COURT: Okay. I'm going to allow the answer
21 "yes" because it sounded like it's preliminary for
22 foundation.

23 Go ahead.

24 MR. MADDEN: All right.

25 BY MS. FILO:

26 Q. You're not trying to deny anything that was on the
27 recording; right?

28 A. No.

1 Q. You would agree that whatever your words were, they
2 were?

3 A. Yes.

4 Q. And you tried to do your best to tell the truth to Det.
5 Pierce?

6 A. Yes.

7 Q. You're trying to do the best you can to tell the truth
8 today?

9 A. Yes.

10 Q. You've never lied to anybody on purpose about what this
11 is?

12 MR. MADDEN: Objection. Leading.

13 THE WITNESS: No.

14 THE COURT: Although I believe it was leading, I
15 will allow the answer, which was "no."

16 BY MS. FILO:

17 Q. You said that you were concerned that what Arleth was
18 telling you was a sex act; right?

19 A. Yes.

20 Q. What made you concerned about that?

21 A. Well, I was concerned because it was going to affect
22 her, obviously, and also me because I'm her cousin, and my
23 mom and everyone. So I tried my best to figure out what was
24 happening.

25 Q. Okay. What was it about what she was telling you that
26 made you think this was a sex act?

27 A. Well, when she started telling me -- when she described
28 it to me. When she told me what he would do to her, it made

1 me think that it was a sex act.

2 Q. You were in school too at the time; right?

3 A. Yes.

4 Q. Anything like that ever happen to you?

5 A. No.

6 Q. You have never been pulled into a teacher's classroom
7 blindfolded and things put in your mouth, have you?

8 A. No.

9 Q. No? But it was the words she was using that made you
10 think this was a sex act?

11 A. Yes.

12 MS. FILO: That's all the questions I have, Your
13 Honor.

14 THE COURT: Thank you.

15 Recross?

16 MR. MADDEN: Nothing. Thank you, Your Honor.

17 THE COURT: Thank you. You may step down. You are
18 excused. You may leave the witness stand.

19 At this time, ladies and gentlemen, we're going to
20 take the morning recess. I will order all members of the
21 jury to report the jury assembly room on the second floor and
22 we'll call you back at approximately 11:00 o'clock on the
23 court clock.

24 We'll be in recess.

25 (Whereupon, a brief recess was taken.)

26 THE COURT: Record will reflect all members of the
27 jury are present in the courtroom, both counsel are present,
28 Mr. Chandler is present.

1 Ms. Filo, your next witness?

2 MS. FILO: Thank you, Your Honor. The People call
3 Arleth.

4 ARLETH DOE,

5 Being called as a witness on behalf of the People,
6 having been first duly sworn, was examined and testified as
7 follows:

8 MS. FILO: Your Honor, the witness is accompanied
9 by an advocate.

10 THE COURT: Thank you.

11 Good morning.

12 THE WITNESS: Good morning.

13 THE COURT: Could you spell your first name for me?

14 THE WITNESS: A-r-l-e-t-h.

15 THE COURT: Okay. And the lawyers are going to ask
16 you questions, and I'm assuming Ms. Filo talked to you about
17 how she's going to ask the questions and the rules in the
18 court, so I'm going to simply let her begin. Okay?

19 THE WITNESS: Okay.

20 THE COURT: During this process, if for some reason
21 you want to take a break, just let me know or ask Ms. Filo,
22 and I will give you a break.

23 THE WITNESS: Okay.

24 THE COURT: Thank you.

25 Direct.

26 MS. FILO: Thank you, Your Honor. May I approach?

27 THE COURT: Yes.

28 ///

DIRECT EXAMINATION

1 BY MS. FILO:

2 Q. Arleth, I'm going to scoot this microphone a little
3 closer to you. Okay? Could you talk right into there for
4 me?
5

6 A. Yeah.

7 Q. Okay. All right.

8 Arleth, you and I have talked before about the
9 rules of testifying. Do you remember those?

10 A. Yes.

11 Q. What rules did we talk about?

12 A. That we have to be correctly.

13 Q. You have to what?

14 A. We have to be correctly.

15 Q. Okay. Did we talk about telling the truth?

16 A. Yeah.

17 Q. And we only tell the truth in court?

18 A. Yeah.

19 Q. And we talked about using real words?

20 A. Yeah.

21 Q. Like yes or no or I don't know?

22 A. Yes.

23 Q. And did we talk about letting me finish before you
24 begin?

25 A. Yes.

26 Q. So that Ms. Jamie here could take everything down?

27 A. Yeah.

28 Q. Yeah? Do you remember talking about all of those

1 things?

2 A. Yeah.

3 Q. Okay. Arleth, are you a little bit nervous being here
4 today?

5 A. Yes.

6 Q. How come?

7 A. I don't know.

8 Q. You don't know?

9 A. (Shakes head side to side.)

10 Q. Okay. Is it being in a courtroom that makes you scared?

11 A. Not really.

12 Q. Not really?

13 A. (Shakes head side to side.)

14 Q. You are shaking your head no?

15 A. No.

16 Q. What is it that makes you nervous?

17 A. Being in front of people.

18 Q. Being in front of people. Yeah, that makes a lot of
19 people nervous. Do you know what I want to ask you about?

20 A. No.

21 Q. No? Do you know that I'm going to ask you some
22 questions about being in Mr. Chandler's classroom?

23 A. Yes.

24 Q. Yeah? Does that make you nervous?

25 A. A little bit.

26 Q. How come?

27 A. Because -- I don't know.

28 Q. You don't know?

1 A. (Shakes head side to side.)

2 Q. Just makes you nervous to talk about that?

3 A. Yeah.

4 Q. Okay. All right. Well, you remember that if you don't
5 understand one of my questions, you just need to stop me.

6 Okay?

7 A. Okay.

8 Q. What are you going to say?

9 A. Um, may you repeat the question?

10 Q. All right. Great job. If you don't understand
11 something, you just say: Ms. Alison, I don't know what you
12 are saying. Could you say it differently. Okay?

13 A. Okay.

14 Q. Promise me?

15 A. Yeah.

16 Q. All right. Okay. Arleth, how old are you right now?

17 A. Eleven.

18 Q. When is your birthday?

19 A. June 20th.

20 Q. Do you know what year you were born?

21 A. 2002.

22 Q. Okay. So you are going to start what grade in about a
23 month?

24 A. Fifth. I don't understand you.

25 Q. Okay. See, there you go. Just tell me you don't
26 understand. What grade did you just finish?

27 A. Fifth.

28 Q. You just finished fifth grade? You are going to go to

1 sixth grade; right?

2 A. Yeah.

3 Q. Yes? Okay. So, Arleth, could you tell me who your
4 teacher was for fifth grade?

5 A. Ms. -- I forgot her name.

6 Q. Okay. And do you know who your teacher was for fourth
7 grade?

8 A. Ms. Ketman.

9 Q. Ketman?

10 A. Yeah.

11 Q. K-e-t-m-a-n?

12 A. K-e-t-m -- I forgot how to spell it.

13 Q. Okay. But I'm close, Ketman; is that right?

14 A. Yeah.

15 Q. Okay. And then do you know who your teacher was for
16 third grade?

17 A. Chandler.

18 Q. Mr. Chandler?

19 A. Yeah.

20 Q. Okay. Where did you go to school when Mr. Chandler was
21 your teacher? What was the name of the school?

22 A. O.B. Whaley.

23 Q. Okay. All right. So when you were in the third grade
24 with Mr. Chandler, do you remember who your best friends were
25 at school?

26 A. Um, Melissa.

27 Q. Melissa, okay. Who else?

28 A. I don't remember.

1 Q. Okay. But you remember Melissa?

2 A. Yeah.

3 Q. And was Melissa in Mr. Chandler's class, too?

4 A. Yeah.

5 Q. Yes? All right. Arleth, did you ever -- were you ever
6 in Mr. Chandler's classroom alone with Mr. Chandler?

7 A. Yes.

8 Q. Yes?

9 A. (Shakes head up and down.)

10 Q. Arleth, there is a picture right behind you. It's a big
11 blown-up picture and it's been marked as Defendant's A-2. Do
12 you recognize what's in that picture?

13 A. Um, his class. The class.

14 Q. Mr. Chandler's class?

15 A. Yeah.

16 Q. So there is kind of a big wooden desk right in the
17 middle of that picture. Do you know whose desk that is?

18 A. Mr. Chandler's --

19 Q. Okay.

20 A. -- desk.

21 Q. And then there is in the bottom left-hand corner what
22 looks like a student desk. Is that what that is?

23 A. Yeah.

24 Q. Okay. And is that what you remember Mr. Chandler's
25 classroom looking like when you were in his classroom?

26 A. Yeah.

27 Q. Yes?

28 A. Yes.

1 Q. Okay. So you said that you were in Mr. Chandler's
2 classroom with Mr. Chandler alone; is that right?

3 A. Yeah.

4 Q. How many times did that happen?

5 A. Five or six.

6 Q. Okay. Arleth, when you -- how did you come to be alone
7 in the classroom with Mr. Chandler? Why were you alone in
8 there?

9 A. Because he told me to go after recess.

10 Q. So he told you to come back to the classroom?

11 A. Yeah.

12 Q. During recess?

13 A. Yeah.

14 Q. Do you know what recess that was? Was it morning or
15 lunchtime or afternoon?

16 A. Like, the afternoon recess.

17 Q. Okay. You said he would have you come into the
18 classroom; is that right?

19 A. Yeah.

20 Q. Were you by yourself with Mr. Chandler then?

21 A. Yes.

22 Q. What happened -- do you remember the very first time
23 that ever happened?

24 A. No.

25 Q. Okay. So you remember it happening more than once?

26 A. Yes.

27 Q. But you don't have a memory of the first time it
28 happened?

- 1 A. No.
- 2 Q. Do you have a memory of the last time it happened?
- 3 A. Yes.
- 4 Q. Could you tell me what happened the very last time you
- 5 were alone with Mr. Chandler in his classroom?
- 6 A. Um, he put me -- something in my eye, like to cover my
- 7 eye.
- 8 Q. Okay. He put something to cover your eyes?
- 9 A. Yes.
- 10 Q. What -- do you know what it was?
- 11 A. No.
- 12 Q. No?
- 13 A. I did, but I don't know what it's called.
- 14 Q. Could you describe it for me?
- 15 A. Um, just put -- he just put it on you, like something
- 16 like that.
- 17 Q. Okay. You said it covered your eyes?
- 18 A. Yeah.
- 19 Q. What was in the back of it?
- 20 A. Something so it's not going to fall.
- 21 Q. Something so it wouldn't fall off?
- 22 A. Yeah.
- 23 Q. Like a string or a tie or something?
- 24 A. Like a string.
- 25 Q. Okay. And what was it made out of? Was it made out
- 26 of -- do you know what it was made out of?
- 27 A. No.
- 28 Q. Was it made out of cloth? Like, fabric like --

1 A. It was soft.

2 Q. Soft. Okay. And it would cover your whole eyes?

3 A. Yeah.

4 Q. Okay. Do you know where that thing came from? Where in
5 the classroom it came from?

6 A. Um, the closet.

7 Q. Okay.

8 MS. FILO: So, Your Honor, may I approach?

9 THE COURT: Yes. Thank you.

10 BY MS. FILO:

11 Q. In this picture, in Defense A-2, you said the closet.
12 Is that this big cabinet here that says "group prizes"?

13 A. Yes.

14 Q. Is that what you mean?

15 A. Yes.

16 Q. That's where the blindfold came from?

17 A. Yes.

18 Q. Okay. What happened once he got the blindfold?

19 A. He said to put it on me.

20 Q. Were you standing up or sitting down or what were you
21 doing?

22 A. I was standing up.

23 Q. Okay. So you put this thing on your eyes?

24 A. Yes.

25 Q. And then what happened?

26 A. Then I sat down.

27 Q. Do you know where you were in the classroom when you sat
28 down?

- 1 A. Yes.
- 2 Q. Could you show me?
- 3 A. Right -- little bit more over there.
- 4 Q. Okay. So there is a number three on this picture on the
- 5 bottom right-hand corner; right?
- 6 A. Yeah.
- 7 Q. Is where you were not even pictured here?
- 8 A. A little more like that.
- 9 Q. It was off the picture?
- 10 A. Yeah.
- 11 Q. You can't even see where you were from this picture?
- 12 A. Yeah.
- 13 Q. Correct?
- 14 A. Yes, correct.
- 15 Q. Okay. All right. So you said you sat down. Do you
- 16 know what you sat on?
- 17 A. A chair.
- 18 Q. A chair. Did you already have the blindfold on when you
- 19 sat down?
- 20 A. No. I sat down and then I put the blindfold on.
- 21 Q. Okay. Do you know what kind of chair it was?
- 22 A. Like the one from over there.
- 23 Q. Okay. So you want to -- so I will give you this. Could
- 24 you point to it?
- 25 A. (Indicating).
- 26 Q. It was a chair from over here?
- 27 A. Yeah.
- 28 Q. Do you know what chair it was, or you just know this is

1 where it came from?

2 A. It was like that kind of chair.

3 Q. This kind of chair? The blue one right here?

4 A. Yeah.

5 Q. Okay. How did he get the chair from over -- from where
6 it is in the picture on the left-hand side over to where you
7 sat?

8 A. I just came in and it was right there already.

9 Q. It was there?

10 A. Yeah.

11 Q. Okay. And then you put a blindfold on?

12 A. Yes.

13 Q. And then what happened when the blindfold was on?

14 A. He put me something -- put something in my mouth.

15 Q. He put something on your mouth?

16 A. Yeah.

17 MR. MADDEN: Your Honor, I'm sorry. I didn't hear
18 that.

19 THE COURT: He put something on my mouth; is that
20 correct?

21 (Whereupon, the record was read.)

22 THE COURT: He put something in my mouth, according
23 to the court reporter.

24 BY MS. FILO:

25 Q. Was it -- let me just be clear. Was it inside your
26 mouth or on your mouth?

27 A. It was on my mouth. He put something on my mouth.
28 Like, first it was, like, a candy, type of candy.

1 Q. Okay. So was it on your tongue or on your lips or where
2 was it?

3 A. Inside my mouth.

4 Q. Okay. So he put a piece of candy in your mouth?

5 A. Yeah.

6 Q. Did you know what kind of candy it was?

7 A. A lollipop.

8 Q. Okay. And did he put -- how long was the lollipop in
9 your mouth?

10 A. Like, little bit of time.

11 Q. Okay. Did he put anything else in your mouth?

12 A. He put, like, something -- I don't know. Something. I
13 don't know what it was.

14 Q. Okay. So he did put something else in your mouth?

15 A. Yes.

16 Q. That was not a lollipop?

17 A. Yes.

18 Q. Do you know what it felt like?

19 A. Um, squishy.

20 Q. Squishy?

21 A. Yeah.

22 Q. Do you know how big it was?

23 A. No.

24 Q. Do you know what shape it was?

25 A. Like a circle. I think a circle.

26 Q. Okay. But you don't know how big it was?

27 A. No.

28 Q. Okay. Was it something you could -- you could put all

1 the way in your mouth? You could close your mouth around?

2 Does that make sense?

3 A. Yeah, but kind of. You could close your mouth a little
4 bit.

5 Q. So you could only close your mouth a little bit?

6 A. Yeah.

7 Q. Okay. You said it felt kind of squishy?

8 A. Yes.

9 Q. Did it have any taste?

10 A. No.

11 Q. No taste?

12 A. (Shakes head side to side.)

13 Q. Could you remember anything else that it felt like other
14 than squishy?

15 A. It was soft, like slippery.

16 Q. Slippery?

17 A. Yeah.

18 Q. What did -- what did the thing do while it was in your
19 mouth, if anything?

20 A. Um, it threw like some water, like, a type of drink.

21 Q. Okay.

22 MR. MADDEN: Your Honor, I'm sorry. I can't hear.

23 THE COURT: Okay. Could you say your answer again?

24 THE WITNESS: Yeah. It threw like a type of drink,
25 something.

26 BY MS. FILO:

27 Q. It threw like a type of drink?

28 A. Yeah.

1 Q. Okay. So the thing that was in your mouth, some sort of
2 drink came out of that?

3 A. Yes.

4 Q. Do you remember what the drink tasted like?

5 A. No.

6 Q. No? Do you remember whether it tasted good or bad?

7 A. I don't know.

8 Q. Don't --

9 A. I don't remember.

10 Q. You don't remember? Okay.

11 While that thing was in your mouth, did it just
12 stay in your mouth or did it move at all?

13 A. It just stayed in my mouth.

14 Q. So you -- I want to make sure I ask this carefully.
15 Okay?

16 A. Okay.

17 Q. So did the thing not move or do you not remember whether
18 it moved?

19 A. It didn't move.

20 Q. Okay. Do you remember whether the drink was hot or
21 cold?

22 A. It was normal.

23 Q. Okay.

24 MR. MADDEN: I'm sorry, Your Honor. I didn't hear
25 the last answer.

26 THE COURT: It was normal.

27 BY MS. FILO:

28 Q. Arleth, how many -- you said that you were alone with

1 Mr. Chandler about five or six times; is that right?

2 A. Yes.

3 Q. Did you have this blindfold on each of those five or six
4 times?

5 A. Yes.

6 Q. Arleth, you start school usually in -- do you know what
7 month you -- sorry -- what month you usually start school?

8 A. No.

9 Q. No? You're just about to go back to school; right?

10 A. Yeah. Well, in a month. In August.

11 Q. In August. Okay. When you started in Mr. Chandler's
12 classroom, do you think you started sometime in August?

13 A. I don't remember.

14 Q. Okay. Do you remember how soon after you started school
15 did you first come into the classroom and have this blindfold
16 on?

17 A. No. Some days passed a little bit.

18 Q. Okay. Do you know if it was towards the beginning of
19 the year, the middle of the year, or the end of the school
20 year?

21 A. Like, beginning of the year.

22 Q. It was the beginning. Okay.

23 When this thing was in your mouth, did you hear
24 anything?

25 A. Yes.

26 Q. What did you hear?

27 A. Um, just to keep on licking it.

28 Q. Is that what Mr. Chandler said to you?

1 A. Yes.

2 Q. Did he say anything else to you?

3 A. No.

4 Q. Did he tell you whether you should bite it or not?

5 A. No. He just told me what I just said.

6 Q. To lick it?

7 A. Yeah.

8 Q. Okay. And to keep doing that?

9 A. Yeah.

10 Q. Did you know -- did you know why this was happening?

11 A. No.

12 Q. No? How did it make you feel?

13 A. It made me -- like something was wrong.

14 Q. Something was wrong?

15 A. Yes.

16 Q. Okay. Why did you think something was wrong?

17 A. Um, because in my other classes they didn't do that.

18 Q. Okay. Nothing like this had ever happened to you
19 before?

20 A. No.

21 Q. No? Okay.

22 So I think the time you were -- you were just
23 talking about, that was last time you remember something
24 happening?

25 A. Yes.

26 Q. Okay. What about the times before that? Do you
27 remember anything? Were they the same or were they
28 different?

1 A. The other times?

2 Q. Yes.

3 A. They were different -- kind of the same.

4 Q. Okay.

5 A. Sometimes that happened, sometimes it didn't.

6 Q. Okay. Say it again.

7 A. Sometimes that happened and sometimes that didn't
8 happen.

9 Q. Okay. How about the times that it didn't happen? What
10 happened when -- when you're saying something didn't happen,
11 what happened on those times?

12 A. Um, we did exercise.

13 Q. Like what?

14 A. Um, I was on the floor.

15 Q. On the floor?

16 A. Yeah.

17 Q. Tell me about that.

18 A. That he was at the back of me.

19 Q. Okay. What do you mean?

20 A. I don't know. Like, we were just doing exercise on the
21 floor.

22 Q. Exercises on the floor?

23 A. Yeah.

24 Q. Okay. Were your eyes covered or could you see?

25 A. I could see.

26 Q. You could see those times?

27 A. Yeah.

28 Q. And what were you -- how many times did that happen?

1 A. Two times.

2 Q. Two times you remember?

3 A. Yeah.

4 Q. All right. And tell me what you remember about those

5 exercises. You said you were on the floor; right?

6 A. Yes.

7 Q. Were you lying down? Were you on your knees? Were you

8 on your back? Were you --

9 A. On my knees.

10 Q. On your knees?

11 A. Yeah.

12 Q. Were you just on your knees or were your hands on the

13 ground, too?

14 A. My -- like, my -- I was on my knees and my hands on the

15 ground, too.

16 Q. Okay. So you are on your hands and knees like a baby

17 crawling?

18 A. Yeah.

19 Q. And where was Mr. Chandler?

20 A. At the back of me.

21 Q. What was he doing?

22 A. He was just holding my leg.

23 Q. He was holding your leg?

24 A. Yes.

25 Q. Where was he holding your leg?

26 A. Like, all the way down on my feet.

27 Q. Okay. So he was holding your feet?

28 A. Yeah.

1 Q. Did you have your shoes on or off?

2 A. On.

3 Q. And so he was holding -- was he holding your shoes or
4 was he holding your ankle or your calf or your knee? Where
5 was he holding?

6 A. Like, my shoes.

7 Q. Right where your shoes were?

8 A. Yes.

9 Q. What was he having you do?

10 A. Just to stay there.

11 Q. He just wanted you to stay there?

12 A. Yeah.

13 Q. What was he doing?

14 A. Um, with his head, he was pushing back, like pushing me
15 all the way back.

16 Q. Okay. You said he used his head, and what part of your
17 body did his head touch?

18 A. The back of me.

19 Q. Like your bottom?

20 A. Yeah.

21 Q. So he was pushing your bottom with his head?

22 A. Yes.

23 Q. And he was holding your feet?

24 A. Yeah.

25 Q. Did he ever tell you why he was doing that?

26 A. No.

27 Q. Did you see anything happen while he was pushing you
28 like that?

- 1 A. Yeah. I saw water dripping.
- 2 Q. Water dripping?
- 3 A. (Shakes head up and down.)
- 4 Q. Where did you see the water?
- 5 A. At the back of me.
- 6 Q. Do you know what the water looked like?
- 7 A. No.
- 8 Q. No? Do you know where the water came from?
- 9 A. I just know it just came from the back of me.
- 10 Q. Okay. Did it -- did you see where the water landed?
- 11 A. Yeah.
- 12 Q. Where did it land?
- 13 A. Like -- like, where he was.
- 14 Q. Okay. So behind you?
- 15 A. Yeah.
- 16 Q. Okay. How long did that happen?
- 17 A. Um, like -- for, like, 15 seconds.
- 18 Q. Not very long?
- 19 A. Yeah, not very long.
- 20 Q. Did -- what happened after he was done pushing you from
- 21 the back?
- 22 A. We did -- I don't know what's it called. We jumped. We
- 23 put our hands, like, in the air.
- 24 Q. Jumping jacks?
- 25 A. Yeah, that.
- 26 Q. Okay. You think that happened two times?
- 27 A. Yeah.
- 28 Q. You were in the classroom alone with Mr. Chandler when

1 this happened?

2 A. Yes.

3 Q. All right. So there were another -- few times where you
4 were sitting down with your eyes covered; is that right?

5 A. Yes.

6 Q. Okay. Were those times the same as you have already
7 described for us?

8 A. Sometimes.

9 Q. Okay. What did you mean "sometimes"?

10 A. Like, sometimes he did that and sometimes we did
11 different, like, exercises. And then, like, one day then we
12 just did exercises and then he just gave me a lollipop and
13 then I left.

14 Q. Okay. So one day you just did an exercise and you left?

15 A. Yeah, it was two times.

16 Q. What was two times?

17 A. To do exercises.

18 Q. Okay. Twice the -- you did these exercises; right?

19 A. (Shakes head up and down.)

20 Q. But then you said there was this time you were sitting
21 in the chair and you put a blindfold on; right?

22 A. Yeah.

23 Q. How many times did that happen, do you know?

24 A. Like, rest of the times.

25 Q. Okay. So another two or three times?

26 A. Yeah.

27 Q. Okay. You told us that this last time that you had the
28 blindfold on, you were sitting in the chair, that he put

1 something in your mouth that was a circle, you don't remember
2 any taste, it was slippery, it stayed in your mouth, and then
3 some drink came out that was normal temperature; right?

4 A. Yeah.

5 Q. Did that happen each other time that he had you sitting
6 in a chair blindfolded?

7 A. Like, one time it didn't happen.

8 Q. Tell me about that time.

9 A. Like, well, when he put that inside and then he didn't
10 do anything else. It was just inside my mouth.

11 Q. So this drink came out?

12 A. Yeah.

13 Q. But was it the same thing? Could you feel it was the
14 same thing?

15 A. Yes.

16 Q. So at least one time the drink came out; right?

17 A. No. One time the drink didn't come out.

18 Q. I got it. Okay. But you know it was the same thing
19 that he put in your mouth?

20 A. Yes.

21 Q. It's just one time the drink didn't come out, and the
22 other times it did?

23 A. Yes.

24 Q. Okay. Arleth, you said you had this -- your eyes
25 covered; right?

26 A. Yes.

27 Q. Were you ever able to peek?

28 A. No. But, like, I looked down a little bit and I could

1 see a little bit.

2 Q. So you didn't ever, like, move the blindfold so you
3 could peek?

4 A. No.

5 Q. But you were able to look underneath it a little bit?

6 A. Yeah.

7 Q. What did you see?

8 A. Like, a circle.

9 Q. A circle?

10 A. Yeah.

11 Q. Did you see anything else?

12 A. No.

13 Q. No? Do you remember if you saw anything else?

14 A. No, I don't remember.

15 Q. You don't remember? Okay.

16 Arleth, do you remember that you met with some
17 police officers from the police department?

18 A. Yes.

19 Q. Yes? And did you do your absolute best to tell them the
20 truth?

21 A. Yes.

22 Q. Do you remember that they asked you to draw that thing
23 that you saw?

24 A. Yeah.

25 Q. Yeah? So if I showed you a picture --

26 MS. FILO: May I approach, Your Honor?

27 THE COURT: Yes.

28 MS. FILO: Your Honor, this has been previously

1 published to the jury, and I'll mark it as an exhibit when I
2 have a clean copy, if the Court is okay with that?

3 THE COURT: I do. And just so it's clear for the
4 record, what you are showing her and what we're going to be
5 marking later, a clean copy, will be People's 7; correct?

6 MS. FILO: Correct. Like I say, it was published
7 to the jury in opening statement.

8 THE COURT: Right.

9 (Whereupon, People's Exhibit 7 was marked for
10 identification.)

11 BY MS. FILO:

12 Q. Arleth, do you remember drawing this object for the
13 police?

14 A. Yes.

15 Q. When you were able to peek underneath the blindfold, is
16 that what you saw?

17 A. Yes.

18 Q. You said it was round; right?

19 A. Yes.

20 Q. What are these lines around it?

21 A. Like, type of hair.

22 Q. Hair?

23 A. Yeah.

24 Q. Okay. Do you remember what color this hair was?

25 A. No.

26 Q. Don't remember now?

27 A. No.

28 Q. Okay. Arleth, did you see anything else when you sort

1 of looked underneath the blindfold?

2 A. No.

3 Q. No? Did you have your glasses on then?

4 A. No.

5 Q. No? Okay. Arleth, why didn't you have your glasses on?

6 A. Because I had to take them off because -- or else I
7 couldn't put -- cover my eyes.

8 Q. Did Mr. Chandler tell you to take your glasses off?

9 A. Yeah.

10 Q. Yeah? Okay. All right. Ready for a little test?

11 A. Yes.

12 Q. Could you take your glasses off for me? All right.

13 Ready? Okay. So I've written something on a post-it note.

14 I'm going to put it right here. Could you see what number
15 that is?

16 A. Yes.

17 Q. What is it?

18 A. Four.

19 Q. Okay. Now, I'm going to take a step back and show you
20 another number. Could you see what number that is?

21 A. I think it's eight.

22 Q. Eight? Okay. Good job. So if I step back here, now
23 could you see which one I'm holding up?

24 A. No.

25 Q. No? It's blurry back here; right?

26 A. Yeah.

27 Q. But when I stand up close to you, could you read those
28 for me?

1 A. Yeah, eight and four.

2 Q. Okay. This you see just fine?

3 A. Yeah.

4 Q. So you just have trouble seeing far away?

5 A. Yes.

6 Q. But when something is close to you, you could see just
7 fine?

8 A. Yeah.

9 Q. Okay. Arleth, you were -- you remember talking to the
10 police department; right?

11 A. Yes.

12 Q. Do you remember whether it was a male police officer or
13 a female police officer?

14 A. It was a male.

15 Q. Man?

16 A. Yeah.

17 Q. Okay. Do you remember where you talked to them?

18 A. On the police department it was, like, a room.

19 Q. It was a room? What did the room look like?

20 A. It was little.

21 Q. Little room?

22 A. Yeah.

23 Q. Okay. It is kind of little. Do you remember when you
24 talked to them?

25 A. Kind of.

26 Q. What do you remember about when you talked to them?

27 A. Like, he just told me that how many times that happened
28 and -- I don't remember.

1 Q. Okay. Do you remember what time of year it was that you
2 talked to the police officers?

3 A. No.

4 Q. Do you remember whether it was a month ago or six months
5 ago or a year ago or two years ago? Do you remember?

6 A. No.

7 Q. No? Do you remember what grade you were in when you
8 talked to them?

9 A. In fourth. Like, in fourth.

10 Q. You were in fourth grade?

11 A. Yeah.

12 Q. Okay. So you were talking to the police officer when
13 you were in fourth grade; right?

14 A. I'm not sure, but I think that I was in fourth.

15 Q. Okay. And you were talking about being in Mr.
16 Chandler's class, which was a year before that?

17 A. Yeah.

18 Q. And you're now going into sixth grade; right?

19 A. Yes.

20 Q. So being in Mr. Chandler's classroom, that's almost
21 three years ago now; right?

22 A. Yes.

23 Q. Because you went through your whole fourth grade year
24 and your whole fifth grade year; right?

25 A. Yes.

26 Q. And you are about to start your sixth grade year?

27 A. Yes.

28 Q. You said this blindfolding thing with Mr. Chandler, that

1 happened at the beginning of the year?

2 A. Yeah.

3 Q. Okay. Arleth, did you -- I lost my own train of
4 thought. Sorry.

5 How did you first tell somebody about being
6 blindfolded in Mr. Chandler's class? Who did you first tell?

7 A. First my cousin.

8 Q. Cousin? Is that Noemi?

9 A. Yes.

10 Q. Are you and Noemi pretty good friends?

11 A. Yeah.

12 Q. You trust Noemi?

13 A. Yeah, yes.

14 Q. Yes? She's a little bit older than you?

15 A. Yes, she's bigger.

16 Q. She's bigger?

17 A. (Shakes head up and down.)

18 Q. Okay. How did you tell Noemi? What -- how did you
19 start talking?

20 A. I was in the house.

21 Q. In whose house?

22 A. Claudia's house.

23 Q. Claudia's house?

24 A. Yeah.

25 Q. Okay. And what were you talking about?

26 A. Like, then I started talking about -- and then my cousin
27 told me that what was happening, and then the -- like, some
28 days we heard on the news what was happening.

1 Q. Okay. So I've got to back up a little bit. Okay? So
2 can you tell me which one of those things happened first?
3 You said you talked to Noemi, you saw there were things on
4 the news, and you told her what was happening. Do you know
5 what order those things happened?

6 A. First, I told her what, and then we started talking and
7 I just told her that -- like, we were, like, drinking
8 something and it reminded me of something.

9 Q. Okay.

10 MR. MADDEN: I'm sorry. I didn't hear the last
11 part, Your Honor.

12 THE COURT: I believe she said we were drinking
13 something and then it reminded me of something; is that
14 accurate?

15 MR. MADDEN: Thank you.

16 BY MS. FILO:

17 Q. Okay. So when you were at Claudia's house, you were
18 drinking something?

19 A. Yes.

20 Q. That made you remember being in Mr. Chandler's class?

21 A. Yes.

22 Q. Is that how you started talking about being in Mr.
23 Chandler's class?

24 A. Yes.

25 Q. That's how you started talking to Noemi?

26 A. Yes.

27 Q. Arleth, why hadn't you told anybody about being
28 blindfolded in Mr. Chandler's class before?

1 A. Because I didn't -- like, I thought it was normal.

2 Q. You thought it was normal?

3 A. Yeah.

4 Q. Yeah? You just said a little while ago that you thought
5 it was wrong. That had never happened in any other class
6 before; right?

7 A. Yeah, because, like, I didn't know it was -- I didn't
8 know what was it.

9 Q. You didn't know what it was?

10 A. Yeah.

11 Q. Okay. Were you worried that you were going to get in
12 trouble?

13 A. No. A little bit.

14 Q. A little bit? Do you remember asking Noemi: Hey,
15 Noemi, if I tell you something, am I going to get arrested?

16 A. Yeah.

17 Q. Why did you ask her that?

18 A. Because -- well, I told her I thought that -- that was,
19 like, something wrong, what he did.

20 Q. Okay. So when you talked to her, you knew that what you
21 were talking about was something bad; right?

22 A. Yeah. And I didn't know it was bad, but then I wanted
23 to make sure, then I told her.

24 Q. You were worried that you were going to get in trouble?

25 A. Yeah.

26 Q. Yeah? Is that why you hadn't told anybody before?

27 A. Yeah.

28 Q. Okay. Arleth, when you were talking to Noemi, did you

1 tell her everything that had happened in Mr. Chandler's, or a
2 little bit? How much did you --

3 A. A little bit.

4 Q. Just a little bit?

5 A. (Shakes head up and down.)

6 Q. Okay. Did she ask you some questions?

7 A. No. She asked me -- yeah, she did.

8 Q. Okay. What kind of questions did she ask you?

9 A. She just said: What happened? Was it in his classroom?
10 And that's all I remember.

11 Q. Okay. Was she telling you what to say?

12 A. No.

13 Q. No? You used your own words?

14 A. Yeah.

15 Q. Do you know -- you know the difference, right, when
16 someone's trying to get you to say something?

17 A. Yeah.

18 Q. If somebody is trying to trick you into saying something
19 that's not true?

20 A. Yeah.

21 Q. Yeah? So if I said, Noemi, it's really the truth that
22 your jacket is black, what would you say?

23 A. No.

24 Q. Well, that's not what happened; right?

25 A. No.

26 Q. Even though I'm a lawyer and I'm a grownup, you would be
27 able to say to me: Ms. Alison, that is not true?

28 A. Yeah.

1 Q. Right?

2 A. (Shakes head up and down.)

3 Q. Okay. So did Noemi say anything to you where you said:
4 No, that's not how it went, Noemi?

5 A. Um-hum.

6 Q. No?

7 A. I just told her what he did to me.

8 Q. So you used your words and she heard what you were
9 saying?

10 A. Yeah.

11 Q. Do you remember using the word "weenie" with her?

12 A. Yeah.

13 Q. Yeah? Was that your word?

14 A. Yeah.

15 Q. She didn't give you that word, did she?

16 A. No.

17 Q. No? When you were able to look underneath that
18 blindfold, is that what you think you saw?

19 A. Yeah.

20 THE COURT: Ms. Filo, I will let you ask a few
21 questions. When you reach a time it would be good to take
22 the afternoon break, just let me know.

23 MS. FILO: I think this is fine, Your Honor.

24 THE COURT: Okay.

25 Ladies and gentlemen, we're going to take the noon
26 recess. I will order all members of the jury to report to
27 the jury assembly room on the second floor at 1:30 and we'll
28 continue with the trial at that time.

1 We'll be in recess. Thank you.

2 (Whereupon, the Court took the noon recess.)

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AFTERNOON PROCEEDINGS

THE COURT: Thank you, ladies and gentlemen.

Record will reflect all members of the jury are present, both counsel are present, Mr. Chandler is present in the courtroom, as well as our witness is on the witness stand.

Ms. Filo, you were continuing with direct.

MS. FILO: Thank you, Your Honor.

BY MS. FILO:

Q. Arleth, I think I'm almost done. Okay? I have a few more questions.

Do you remember those couple of times that you were in the classroom and you said you were on your hands and knees? Remember that?

A. Yeah.

Q. Do you remember what you were wearing by chance?

A. Could you repeat it?

Q. Sure. Do you remember what you were wearing to school those days?

A. Um, it's, like, type of jeans.

Q. Okay. Pants?

A. Yeah, but I don't know, like, how it's called.

Q. Okay. But it wasn't like shorts or a skirt or anything like that?

A. No.

Q. Okay. Arleth, I want to ask you a little bit about -- you remember being interviewed by the police department; right?

A. Yeah.

- 1 Q. Do you remember anything that was on the news about Mr.
2 Chandler?
- 3 A. No.
- 4 Q. No? Did you see any of the news stuff?
- 5 A. No. I just heard that -- what happened. That's all.
- 6 Q. Okay. Do you know who you heard that from?
- 7 A. I mean, like, I just saw, but then I heard it 'cause --
8 from my neighbor that -- in the news, because we were playing
9 and then I saw the video and I didn't want to play, so I --
- 10 Q. Okay. So you were playing with your neighbor?
- 11 A. With my friends.
- 12 Q. With your friend?
- 13 A. (Shakes head up and down.)
- 14 Q. Did your friend go to O.B. Whaley School too?
- 15 A. No.
- 16 Q. Okay. How old was the friend that you were playing
17 with?
- 18 A. She's ten.
- 19 Q. But she went to a different school?
- 20 A. Yeah.
- 21 Q. So you were playing with her and then tell me what
22 happened.
- 23 A. And then I'm -- her mom said: Oh, is that your school?
24 And then I saw him and I'm, like, yeah.
- 25 Q. Okay. So was the television on at your friend's house?
- 26 A. Yeah.
- 27 Q. And did a story come up on the news while you were at
28 your friend's house?

1 A. No.

2 Q. No?

3 A. (Shakes head side to side.)

4 Q. Okay. Maybe I'm not understanding. Did your friend's
5 mom just ask you about something?

6 A. No. She just told me if that's my school.

7 Q. She just asked you if you went to O.B. Whaley?

8 A. Yeah.

9 Q. Did you know at that point that Mr. Chandler was the
10 person that was on the news, or did you just know that O.B.
11 Whaley was on the news?

12 A. I just saw his picture. That's all.

13 Q. You saw his picture on the TV screen?

14 A. Yeah.

15 Q. Okay. Arleth, do you remember more, or did you remember
16 more about being in Mr. Chandler's classroom alone when you
17 were interviewed by the police department?

18 A. I don't understand.

19 Q. Okay.

20 MS. FILO: Your Honor, could I use the easel?

21 THE COURT: Yes.

22 MS. FILO: All right.

23 BY MS. FILO:

24 Q. So, Arleth, if this is 2013 -- that's not going to work.
25 So we're in 2013 now; right?

26 A. Yes.

27 Q. That's now; right?

28 A. Yeah.

1 Q. And you were interviewed by the police department in
2 2012; right?

3 A. Yeah.

4 Q. And you were in Mr. Chandler's class in 2010 and 2011;
5 right?

6 A. Yeah.

7 Q. That's when you were in third grade?

8 A. Yes.

9 Q. So your discussion with the police was a lot closer to
10 being in third grade than we are now; right?

11 A. Yeah.

12 Q. Because this was 2 1/2, 3 years ago, and this was 1 1/2
13 years ago; right?

14 A. Yeah.

15 Q. Is that right?

16 A. Yes.

17 Q. Okay. So when you talked to the police, did you
18 remember things a little bit better -- your memory fades over
19 time; right?

20 A. Um, wait. Could you repeat it?

21 Q. Sure. Do you remember yesterday a lot better than you
22 remember a year ago?

23 A. Yeah.

24 Q. Yes. Because your memory fades; right? You don't
25 remember things as well as more time goes on; right?

26 A. Yes.

27 Q. Okay. When you talked to the police, did you do your
28 absolute best to tell them the whole truth and nothing but

1 the truth?

2 A. Yeah.

3 Q. You didn't tell any lies to them; right?

4 A. Yeah, I didn't tell them any lies.

5 Q. Okay. Arleth, has this -- has this process been
6 difficult for you? Coming to court, is that hard for you?

7 A. Yeah.

8 Q. It's not something you like to do; right?

9 A. No.

10 Q. No? Like, if you could be home playing with your
11 friends, that will be way better; right?

12 A. Yeah.

13 Q. Yeah? I don't blame you. Me too. Okay.

14 And have any of the kids -- have any of the kids on
15 the school ground made fun of you for being a part of this
16 case?

17 A. No.

18 Q. No? And have you talked to any other kids about being
19 part of this case?

20 A. No.

21 Q. Okay. All right. Arleth, I think that's all the
22 questions I have. Thank you very much.

23 THE COURT: Thank you, Ms. Filo.

24 Cross-examination, Mr. Madden?

25 MR. MADDEN: Thank you, Your Honor.

26 CROSS-EXAMINATION

27 BY MR. MADDEN:

28 Q. I'll be right there, Arleth.

1 Arleth, my name is Mr. Madden. I'm Mr. Chandler's
2 lawyer, and I'm going to ask you some questions. Okay?

3 A. Okay.

4 Q. And you could hear me okay?

5 A. Yes.

6 Q. Good. I could hear you. If I ask you a question and
7 you don't understand it, you want to tell me that you don't
8 understand it before you give me an answer, and then I'll try
9 to change the question so you do understand it. Okay?

10 A. Okay.

11 Q. Sometimes I'm thinking about too many things at one time
12 and I ask a question that I think is good, but it doesn't
13 make any sense when you hear it. You know what I mean?

14 A. A little bit.

15 Q. Okay. So if you don't understand the question, it's not
16 your fault; that's mine. Okay?

17 A. Okay.

18 Q. And don't be embarrassed to tell me you don't
19 understand?

20 A. Okay.

21 Q. It's important that we communicate. Okay?

22 A. Yes.

23 Q. What I mean by communicate, it's important that we
24 understand what each other is saying. Okay?

25 A. Yes.

26 Q. All right. So this morning, when you described the
27 thing that was in your mouth, I think the last time it was
28 put in your mouth, you described it as a circle; is that

1 right?

2 A. Yes.

3 Q. And by a circle, do you mean like perfectly round?

4 A. No.

5 Q. What did you mean?

6 A. Like, it's like a circle, but like an oval. I don't
7 know.

8 Q. Okay. Did you ever use the word, like an ice cream cone
9 to describe the shape?

10 A. No.

11 Q. Okay. Do you remember answering questions from Mr.
12 Chandler's attorney in May of last year in this same
13 courthouse?

14 A. Kind of, yeah.

15 Q. Good. This is only the second time that you've had to
16 come on the witness stand and sit behind the microphone;
17 right?

18 A. Yeah.

19 Q. Okay. So that -- I'm just telling you that was in this
20 same building, was on May 22nd. You remember what the man
21 looked like who was asking you questions?

22 A. Yeah.

23 Q. Kind of big with a mustache?

24 A. Yes.

25 Q. Okay. Do you remember his name?

26 A. No.

27 Q. Good. It's not important.

28 Now, did you tell Ms. Filo on that day, or did you

1 answer her questions: Did it have a shape? And did you say:
2 A cone, like ice cream?

3 A. I don't remember.

4 Q. Okay. Now, does that -- well, so you say "circle"
5 today, but you may have said "cone" on May 22nd?

6 MS. FILO: Objection, Your Honor. Misstates the
7 testimony.

8 THE COURT: Sustained.

9 MR. MADDEN: Thank you.

10 BY MR. MADDEN:

11 Q. You ever eat ice cream cones?

12 A. Could you repeat it?

13 Q. Sure. Do you ever eat ice cream cones?

14 A. Yes.

15 Q. Okay. Me too. When I think of ice cream cones, I think
16 of two types. I think of what I call an old fashioned kind
17 of ice cream cone and one that has -- comes to a point at the
18 bottom. Do you know which kinds I'm talking about?

19 A. Yeah.

20 Q. Okay. Let me -- these don't need to be marked. I know
21 you don't see that well.

22 MR. MADDEN: May I approach, Your Honor?

23 THE COURT: Yes.

24 BY MR. MADDEN:

25 Q. I'm going to show you two boxes, one has some cones that
26 I would describe as old fashioned, and these appear to come
27 to a point; right?

28 A. Yes.

1 Q. Okay. Does seeing these boxes, or these pictures, help
2 you remember anything about the shape of the object being
3 like a cone?

4 A. No.

5 Q. Okay. And this object had no taste when it was in your
6 mouth; right?

7 A. No.

8 Q. That's right?

9 A. Yeah.

10 Q. Okay. When the object was in your mouth, it just stayed
11 there; right?

12 A. Yes.

13 Q. It didn't move one way or another?

14 A. No.

15 Q. It didn't move up and down or back and forth?

16 A. No.

17 Q. Okay. Now, this morning I believe you said that while
18 these things were going on, you felt normal; right?

19 A. Yeah.

20 Q. All right. It wasn't until after Mr. Chandler was
21 arrested and after you saw things on the news that you began
22 to think that maybe it was bad?

23 A. Yeah.

24 Q. Okay. Is that fair?

25 A. Huh?

26 Q. Let me withdraw that question.

27 You didn't cry or anything during any of the times
28 that you were alone with Mr. Chandler, did you?

1 A. No.

2 Q. You didn't tell him that you were upset?

3 A. No.

4 Q. You didn't spit anything out of your mouth?

5 A. Wait. Yeah.

6 Q. I'm sorry?

7 A. Yeah.

8 Q. Yeah, you did?

9 A. Yeah.

10 Q. What was that?

11 A. It was --

12 Q. I'm sorry?

13 A. The type of drink.

14 Q. A type of drink. What type of drink was that?

15 A. I don't know.

16 Q. Did you ever see any plastic bottles on Mr. Chandler's
17 desk with drinks in them?

18 MS. FILO: Objection, Your Honor. Vague as to
19 time.

20 THE COURT: Sustained.

21 BY MR. MADDEN:

22 Q. At any of the times that you were alone with him?

23 A. No.

24 Q. Okay. I would like to talk about the times that you
25 were doing exercises. Okay?

26 A. Okay.

27 Q. So there were two times that you were alone with Mr.
28 Chandler and you were doing exercises; right?

1 A. Yes.

2 Q. You described one where you were down on the floor with
3 your hands on the floor and your knees on the floor; right?

4 A. Yeah.

5 Q. And did you get in that position on both the days that
6 you did exercises?

7 A. I don't know what the word means.

8 Q. Which one?

9 A. The -- I don't know how to say it.

10 Q. That's okay. Go ahead and finish.

11 A. I don't know how to say it.

12 THE COURT: Position?

13 THE WITNESS: Yeah.

14 MR. MADDEN: Okay. Thank you, Your Honor.

15 BY MR. MADDEN:

16 Q. I'm using the word "position" to mean exactly how you
17 were placed on the ground. In other words, where your hands
18 were, where your knees were, where your head was, that kind
19 of thing. That's what I mean by position. Okay?

20 A. Okay.

21 Q. All right. Now, you remember today that what he pushed
22 you with -- when you were on the ground doing that exercise
23 when your feet and your knees were on the ground, he pushed
24 you with his head; is that right?

25 A. Yes.

26 Q. All right. And that's what you told the police, that he
27 pushed you with his head; right?

28 A. Yes.

1 Q. Did you tell the court about a year ago next door that
2 what he pushed you with was a bouncy ball?

3 A. At first it -- on one day, he pushed me with his head,
4 and then the other time, I don't know, like, when, but then
5 it was a ball.

6 Q. So one day he pushed you with his head?

7 A. Yeah.

8 Q. And another day he pushed you with a bouncy ball?

9 A. Yeah. It was with a different day.

10 Q. Okay. It was the same thing? Only one day it was his
11 head and one day it was a bouncy ball?

12 A. Yeah.

13 Q. And so he was behind you with his hands on either your
14 ankles or your shoes?

15 A. My shoes.

16 Q. Did you tell the court a year ago that it was his -- he
17 was holding your ankle?

18 A. I don't remember.

19 Q. Okay. And then how long did he hold on to your shoes?
20 For just a second or for a long time?

21 A. Like, 15 seconds. Not that much.

22 Q. The whole exercise lasted 15 seconds?

23 A. Yeah, only that exercise.

24 Q. Okay. The one when you were on the ground, that lasted
25 15 seconds?

26 A. Yeah.

27 Q. Okay. And did you ever do that exercise where you are
28 on your hands and knees on a rainy day in the classroom with

1 the rest of the students?

2 A. No.

3 Q. Some days you couldn't go to PE because the weather was
4 bad; right?

5 A. Yeah.

6 Q. On those days, you did some kind of fun things in the
7 class?

8 A. Yes.

9 Q. Some of those things were exercises; right?

10 A. I don't remember.

11 Q. Okay. You also on those days perhaps played indoor
12 games; correct?

13 A. Yes.

14 Q. You and all of the kids; right?

15 A. Yes.

16 Q. Then some days when the class -- maybe in the afternoon,
17 like today, when you get tired, maybe he had everyone do a
18 couple of exercises to wake up?

19 A. Sometimes, yeah.

20 Q. Okay. Now, on the two days that he had you do the
21 exercises, did you do jumping jacks on both days?

22 A. Only on one day.

23 Q. So one day you did two things; right?

24 A. Yeah.

25 Q. And another day you only did one thing?

26 A. Yeah.

27 Q. Okay. But on both of those days, there was no
28 blindfold; right?

1 A. Yeah.

2 Q. That's correct?

3 A. That's correct.

4 Q. Okay. And did Mr. Chandler during those exercises tell
5 you not to look?

6 A. Um, I'm not sure.

7 Q. You don't remember him saying: Don't look or anything;
8 right?

9 A. No. Like, I don't know. I don't remember.

10 Q. Okay. So the days that you were blindfolded, you were
11 not doing any exercises?

12 A. Only one time I didn't because he told me to get up and
13 then we did exercises.

14 Q. One of the times you were blindfolded?

15 A. Yeah.

16 Q. Okay. So I want to talk a little bit about the
17 blindfold?

18 A. Okay.

19 Q. Now, did you know what the word "blindfold" meant at the
20 time you were in Mr. Chandler's class?

21 A. No.

22 Q. Do you know what the word means now?

23 A. Yeah.

24 Q. What does it mean?

25 A. Something that you cover your eyes.

26 Q. Sure. Okay. You've seen pictures of them?

27 A. Yeah.

28 Q. Okay. Do you like Halloween?

1 A. Yes.

2 Q. Kids wear lots of masks and things on Halloween; right?

3 A. Yes.

4 Q. Sometimes masks that just -- there is holes in it for
5 their eyes, but if they were -- it was solid, it wasn't
6 holes, it would be a blindfold, wouldn't it?

7 A. Yeah.

8 Q. Is that what we're talking about? It's something that's
9 like a mask on your face?

10 A. Yeah.

11 Q. Is there a place that goes over your nose?

12 A. I don't know. Yeah.

13 Q. Okay.

14 THE COURT: Excuse me, Counsel. Could you approach
15 briefly?

16 MR. MADDEN: Yes.

17 (Whereupon, there was a discussion at the bench.)

18 THE COURT: Sorry for the interruption, Mr. Madden.
19 When you are ready.

20 MR. MADDEN: Thank you.

21 BY MR. MADDEN:

22 Q. Let's get back to the mask. All right?

23 A. Okay.

24 Q. I'm calling it a mask. A blindfold, all right?

25 A. All right.

26 Q. So Mr. Chandler never put it on you; right?

27 A. The blindfold?

28 Q. Yes.

1 A. No.

2 Q. You always put it on yourself?

3 A. Yeah.

4 Q. He didn't adjust it or anything?

5 A. What does that word mean?

6 Q. I'm sorry. So it was a blindfold covering, I would
7 assume, your eyes and probably went down to your -- covered
8 your cheeks and covered your nose; right?

9 A. It was -- it didn't cover. It was almost like my
10 glasses, but it was a little bit more, like, down.

11 Q. Good. That's a good description. A little bit more
12 than your glasses?

13 A. Yeah.

14 Q. Okay. And it had a string that --

15 A. The back.

16 Q. In the back. And was it a string that stretched or was
17 it like just a regular string?

18 A. It stretched.

19 Q. Okay. So once you put it on, was it tight enough you
20 could take your hands off and it would stay right against
21 your face?

22 A. Yeah, it would stay there.

23 Q. In other words, it was not loose?

24 A. No.

25 Q. Okay. Now, when the thing was in your mouth, you didn't
26 hear any noises?

27 A. Wait. Yeah.

28 Q. What did you hear that was a noise?

1 A. He just told me to keep on licking it.

2 Q. I'm sorry, to what?

3 A. He told me to keep on licking it.

4 Q. I don't mean did he say anything. I mean, did you hear
5 any noises? Not words, but any other noises?

6 A. No.

7 Q. Okay. Now, the liquid that came out in your mouth, that
8 wasn't hot. It wasn't cold. It was just normal; right?

9 A. Yeah.

10 Q. And did it appear to be water?

11 A. I wasn't sure if it was water.

12 Q. Okay. One time it spilled a little?

13 A. Yeah.

14 Q. When you say it spilled a little, does that mean it
15 spilled a little bit out of your mouth?

16 A. Yes.

17 Q. Okay. On the days when you were alone with Mr. Chandler
18 and blindfolded, when everything was done, did Mr. Chandler
19 say anything to you about telling anyone?

20 A. No.

21 Q. He never said that at all; right?

22 A. Yeah, correct.

23 Q. So there were two times when you were on your hands and
24 knees; right?

25 A. Yes.

26 Q. Two different times?

27 A. Yeah.

28 Q. One time he pushed you with a ball and one time he

1 pushed you with his head?

2 A. Yes.

3 Q. Right?

4 A. Yes.

5 Q. Now, on one of those times you saw some liquid?

6 A. Yes.

7 Q. And I want to talk with you about that time. Do you
8 remember if at that time he had pushed you with his head or
9 with a ball? If you remember?

10 A. Yeah, I don't remember.

11 Q. Okay. Thank you. That's fine. That's another thing,
12 that if I ask you a question and you really don't remember,
13 that's okay. All right?

14 A. All right.

15 Q. So tell me about what you saw when you saw the liquid?

16 A. Um, I only saw it out of the back of me.

17 Q. I'm sorry?

18 A. I saw it out the back.

19 Q. You saw it out the back?

20 A. Yeah.

21 MR. MADDEN: Now, is it okay if I get down on the
22 ground?

23 THE COURT: If you want, yes.

24 MR. MADDEN: I don't really want to, but I don't
25 see any other way.

26 BY MR. MADDEN:

27 Q. So if I'm -- I got my toes on the ground, I've got my
28 knees on the ground, and now I have my hands on the ground

1 and I'm trying to look up and see you. You could see me;
2 right?

3 A. Yeah.

4 Q. All right. Not for long.

5 So if I'm trying to see something behind me, I have
6 to either look around my left shoulder or my right shoulder
7 as I turn, or I have to look down between my legs. Which one
8 did you do?

9 A. I looked down between my legs.

10 Q. Okay. So you got your head bent over towards the floor
11 and you are looking behind you?

12 A. Yeah.

13 Q. And what part of Mr. Chandler could you see when you
14 looked between your legs?

15 A. I could only see his pants. That's all.

16 Q. I'm sorry?

17 A. Only his pants.

18 Q. Okay. Was he standing or was he on the ground or
19 sitting, or how did he appear to be?

20 A. He was on the ground.

21 Q. He was on the ground?

22 A. Yeah.

23 Q. How was he on the ground?

24 A. Like, with his knees.

25 Q. Okay. You are going to tell me how to be like he was?

26 A. Yeah, like that.

27 Q. Just like this?

28 A. Yeah.

1 Q. Then he was -- how far behind you was he?

2 A. Like, closer.

3 Q. So at that time, was his -- was the ball touching you or
4 his head touching you?

5 A. I don't remember.

6 Q. Okay. So if you're looking between your legs backward
7 and he's on his knees, all you're seeing is his knees and his
8 pants; right?

9 A. Yes.

10 Q. Okay. So his pants didn't appear to be down or anything
11 like that, did they?

12 A. No.

13 Q. Okay. Did you tell the court about a little over a year
14 ago when you came down, that he was -- when he was behind
15 you, he was sitting down?

16 A. With his knees.

17 Q. I'm sorry?

18 A. With his knees.

19 Q. If you did say he was sitting down a year ago, you meant
20 that he was on his knees?

21 A. Yeah.

22 Q. Okay. So you see Mr. Chandler's knees and his pants.
23 Did you see what he was doing?

24 A. No.

25 Q. Okay. Wasn't saying anything to you, was he?

26 A. No.

27 Q. You were fully dressed; right?

28 A. Yes.

1 Q. In jeans?

2 A. Yes.

3 Q. With your shoes and socks on?

4 A. Yes.

5 Q. So how long did this whole thing last again? Fifteen
6 seconds?

7 A. Yes.

8 Q. Okay. And did you see any liquid while you looked
9 between your legs?

10 A. I just saw, like -- yeah, liquid falling.

11 Q. And did you see it hit the ground?

12 A. Yeah.

13 Q. And where was it on the ground? Behind you?

14 A. Behind me.

15 Q. All right. And in front of Mr. Chandler's legs or
16 behind his legs?

17 A. Behind.

18 Q. Behind his legs?

19 A. Yeah.

20 Q. I'm going to kneel down again, except this is the
21 position his legs were in; right?

22 A. Yes.

23 Q. And was he facing the same direction that I'm facing?
24 In other words, towards you?

25 A. Yes.

26 Q. And so the liquid was behind him?

27 A. Yeah.

28 Q. I'm pointing behind my back to the ground. That's what

1 you saw?

2 A. Yeah.

3 Q. Okay. Now, did you ever see the class play a game with
4 Mr. Chandler, where they sat in the chair and he put
5 something in their mouth and asked them to guess what it was?

6 A. Yes.

7 Q. You did see that?

8 A. Yes.

9 Q. And the children were blindfolded; right?

10 A. I don't remember.

11 Q. Okay. Do you remember what color the liquid was that
12 you saw?

13 MS. FILO: Objection, Your Honor. Vague as to
14 time.

15 MR. MADDEN: I'm sorry.

16 BY MR. MADDEN:

17 Q. When you said you looked between your legs and saw
18 liquid behind Mr. Chandler's legs, do you remember what color
19 that liquid was?

20 A. No.

21 Q. Okay. Do you remember the year that you were in Mr.
22 Chandler's class studying about and talking about a girl who
23 couldn't see or hear?

24 A. No.

25 Q. Okay. Do you remember the names of any children in your
26 class that you saw play the tasting game when you were in Mr.
27 Chandler's class?

28 A. Yes.

1 Q. Could you give me the name or names of the people that
2 you remember?

3 A. Suzanne.

4 Q. Yes. Who they are, yes?

5 A. Suzanne.

6 Q. I'm sorry. Old ears again. Anybody else?

7 A. That's all I remember.

8 Q. How about Kevin?

9 A. Yeah, he was in my class.

10 Q. Do you remember seeing him play the taste game?

11 A. I'm not sure.

12 Q. And you also -- let me try that again. Excuse me.

13 Do you remember when you were in Mr. Chandler's
14 class playing a feeling game where you had to feel objects on
15 your feet and try to guess what they were?

16 A. Yes.

17 Q. Okay. That was in front of the whole class?

18 A. Yes.

19 Q. Did you ever do that in front of the whole class?

20 A. Yes.

21 Q. I'm sorry?

22 A. Yes.

23 Q. Okay. Do you remember any of the objects that were put
24 against your feet that you guessed?

25 A. Yes.

26 Q. Could you tell me what you remember they were?

27 A. It was a marker.

28 Q. A marker?

1 A. Yeah.

2 Q. Like the one I'm holding?

3 A. Like an Expo marker. An Expo marker.

4 Q. Expo marker. I don't know what that is. I'll move
5 along. Anything else?

6 A. A water bottle.

7 Q. A water bottle. Okay. That game was actually played on
8 the floor; right?

9 A. Yes.

10 Q. The kids would get on the floor to do that; right?

11 A. Yes.

12 Q. The whole class?

13 A. Yeah.

14 Q. Okay. The day that you saw the whole class do that, was
15 everyone having fun?

16 A. Yeah, only some kids.

17 Q. Only some kids did it, or only some kids had fun?

18 A. Only some kids did it. Not all of them.

19 Q. Right. In other words, the whole class was there, but
20 only a few kids were chosen to demonstrate; right?

21 A. Yeah.

22 Q. All right. And the times that you were alone with Mr.
23 Chandler in the classroom, those times were all before you
24 saw the whole class game; right?

25 A. I don't remember. I'm not sure.

26 Q. Okay. Fair enough.

27 And last year, you told the court that those times
28 were before the classroom demonstration; right?

1 A. Yes.

2 Q. Okay. Do you play the taste game in front of the whole
3 class?

4 A. Yes.

5 Q. All right. Because that's what you practiced with Mr.
6 Chandler; right?

7 A. Yes.

8 Q. All right. Do you remember different tastes of things
9 that he put in your mouth the day in front of the whole
10 class?

11 A. I just remember that it was lollipops.

12 Q. You remember --

13 A. That --

14 Q. I'm sorry. You know what I'm trying to say, lollipop.
15 You remember what flavor the lollipop was?

16 A. No.

17 Q. Do you remember last year you told the court the flavors
18 were grape, strawberry, and coconut?

19 A. Yeah, I remember.

20 Q. Three different lollipops, three different flavors;
21 right?

22 A. Yes.

23 Q. You had to guess?

24 A. Oh, yeah, we had to guess.

25 Q. Did you get it right?

26 A. Some.

27 Q. Some. Okay. Now, the time that -- with Mr. Chandler
28 alone and he put the thing in your mouth, you put your own

1 blindfold on; right?

2 A. Yes.

3 Q. And you took your own blindfold off; right?

4 A. Yes.

5 Q. How did you know when to take it off?

6 A. Because he told me.

7 Q. You didn't take it off until he told you to?

8 A. Yes.

9 Q. All right. Do you think that you remember a time that
10 you -- after you took it off, that you saw him doing
11 something with his pants?

12 A. Yes.

13 Q. Do you know that or do you think it?

14 A. I saw.

15 Q. What did you see?

16 A. Well, when he was in the closet when he was putting
17 something --

18 Q. He was kind of --

19 A. When he was -- like, it was already time to go, and then
20 I just heard something.

21 Q. How did you know it was time to go?

22 A. Because it was already, like, off. The recess was
23 already done, and it was already time for the kids to go in.

24 Q. Okay. So I'm going to make sure that I understand what
25 you mean. Is this photograph, which is A-5 for the record,
26 when you say closet, is that what you mean?

27 A. Yeah.

28 Q. Okay. And this photograph, A-6, the same closet only

1 with the doors open?

2 A. I don't remember.

3 Q. Okay. So I think you pointed earlier -- could you point
4 for me again where you were when you saw Mr. Chandler doing
5 something with his pants? Could you put the black part of
6 this tip?

7 A. (Indicating.)

8 Q. You were standing right by the closet?

9 A. No. I was like here, a little bit more over there.

10 Q. I'll take that for you. Thank you.

11 Let me see if I have another one that will get
12 that. I think this one. This is People's A-1 -- excuse
13 me -- Defense A-1. Can I get you to point again where you
14 think you were?

15 A. Like right there. (Indicating.)

16 Q. So you are pointing to an area between the corner of the
17 cabinet and a little sticker with a 2 on it with PXB; right?

18 A. Yeah.

19 Q. Between these two points? All right. Thank you.

20 And were the cabinet doors open or closed?

21 A. They were closed.

22 Q. They were closed. So you have a full view of Mr.
23 Chandler; right?

24 A. No. Like, they were closed and then he opened it.

25 Q. Uh-huh.

26 A. The closet.

27 Q. Then did you see Mr. Chandler, or was your view of Mr.
28 Chandler blocked then?

1 A. No. Like, the closet was closed, but then he opened it
2 and then I just saw, like -- I don't know, but I saw, like,
3 him pulling his pants.

4 Q. Well, did you -- you indicated where you were when you
5 saw Mr. Chandler do something with his pants; right?

6 A. Yes.

7 Q. Mr. Chandler was then down by the closet; correct?

8 A. Yes.

9 Q. And at the time you saw Mr. Chandler, were the closet --
10 how were the doors? Were they all the way open or closed or
11 a little bit open?

12 A. Like, first I just saw him pulling his pants, and then
13 he opened it, the closet.

14 Q. And he already told you to take off the mask, and then
15 you looked and he's there pulling his pants?

16 A. Yeah.

17 Q. I mean, like I'm pulling my pants with just -- pulling
18 the waist up?

19 A. Yeah.

20 Q. So the pants weren't down?

21 A. Like, I don't know, but then I just, like, heard a
22 noise, like a zipper or something.

23 Q. You heard a noise like a zipper?

24 A. Yeah.

25 Q. When did you hear that noise?

26 A. When he first -- he pulled his pants and then he opened
27 the closet and then that's when I heard the noise.

28 Q. Could you -- was your view of Mr. Chandler ever blocked

1 by the closet doors?

2 A. First, when he pulled his pants and then he closed it
3 and then I heard it, that -- like the noise.

4 Q. I'm sorry. I'm still confused. That's probably my
5 fault.

6 You saw him pull his pants up. Now -- here's what
7 I'm doing, I've got my two -- three fingers on my hips at my
8 belt that I'm tugging my pants up.

9 MS. FILO: Your Honor, objection. This is asked
10 and answered. Could we approach?

11 THE COURT: Approach?

12 MS. FILO: Yes.

13 THE COURT: Yeah.

14 (Whereupon, there was a discussion at the bench.)

15 BY MR. MADDEN:

16 Q. All right. I think I understand now, Arleth. When you
17 heard the zipper, could you see Mr. Chandler?

18 A. No.

19 Q. Okay. On the one time that you saw under the blindfold?

20 A. Yeah.

21 Q. Okay. Did you somehow move the blindfold so that you
22 could see under it?

23 A. No. Like, you could see -- you could a little bit see
24 under it.

25 Q. Do you remember saying next door to the court that you
26 tried to move it with your eyes?

27 A. Yeah.

28 Q. You didn't move it with your eyes, did you?

1 A. A little bit.

2 Q. That wasn't possible, was it?

3 A. (Shakes head side to side.)

4 Q. You are shaking your head no?

5 A. No.

6 Q. Okay. Not too much longer, Arleth. Are you okay? Need
7 a break?

8 A. No. I'm okay.

9 Q. Let his honor know you need a break at any time. We'll
10 take a break. Okay?

11 A. Okay.

12 Q. Now, after you saw this on the news at your friend's
13 house, that was the first day that you saw it on the news,
14 when you saw Mr. Chandler's face on the TV?

15 A. The second time. Second.

16 Q. That was the second time you saw his face on the TV?

17 A. Yeah.

18 Q. You saw it once at your house?

19 A. Yeah.

20 Q. The day before?

21 A. No, because we moved somewhere else.

22 Q. Okay. And did your mother start to question you at
23 about that time, asking you about whether Mr. Chandler did
24 anything to you?

25 A. Yeah, when it was the first time.

26 Q. Okay. Did she talk to you every day about that?

27 A. Not every day, but she just said, like, is everything
28 fine? Like that.

1 Q. Okay. Did you ever tell your mother before you talked
2 to Noemi --

3 MS. FILO: Objection, Your Honor. Calls for
4 hearsay.

5 MR. MADDEN: Let me finish the question.

6 THE COURT: Go ahead. Finish the question.

7 BY MR. MADDEN:

8 Q. Did you tell your mother that Mr. Chandler had never
9 touched you or done anything to you and that he was a good
10 man?

11 MS. FILO: Objection, Your Honor. Calls for
12 hearsay.

13 THE COURT: Any response, Mr. Madden?

14 MR. MADDEN: Her statement. I'm not offering it
15 for the truth. Did she utter the words?

16 THE COURT: I will sustain the objection.

17 BY MR. MADDEN:

18 Q. On any of the times that you were alone with Mr.
19 Chandler with the blindfold on, did he ever have you put your
20 head up and give you a little liquid?

21 A. Yeah.

22 Q. And it tasted sweet; right?

23 A. Yeah.

24 Q. And on another occasion, he gave you something, a little
25 liquid in it, had a salty taste; right?

26 A. Yes.

27 Q. And on each of those occasions, he asked you to guess
28 what it was; right?

1 A. Yes.

2 Q. And did you guess right?

3 MS. FILO: Objection, Your Honor. Calls for
4 speculation.

5 MR. MADDEN: Not necessarily.

6 THE COURT: I'll sustain the objection.

7 MR. MADDEN: All right.

8 BY MR. MADDEN:

9 Q. Now, I asked you this before, but you did see a bottle
10 or bottles on Mr. Chandler's desk; right?

11 MS. FILO: Objection. Vague as to time.

12 BY MR. MADDEN:

13 Q. At any of the times that you were alone with him?

14 A. No.

15 Q. When he gave you the liquid, sweet one and the salty
16 one, you had the blindfold on; right?

17 A. Yes.

18 Q. Okay. And one time or -- let me try it again.

19 You remember him telling you to bite the object one
20 time?

21 A. Yes.

22 Q. Was that just one time?

23 A. No.

24 Q. Did he tell you to bite an object on more than one time?

25 A. Yeah.

26 Q. How many times do you think?

27 A. Three.

28 Q. You did bite it; right?

1 A. Yes.

2 Q. And did Mr. Chandler yell or say ouch or anything like
3 that?

4 A. No.

5 Q. Okay. And about a year ago next door, you said that
6 that happened one time; right?

7 A. What happened?

8 Q. That you bit what was in your mouth?

9 A. Yeah, one day.

10 Q. Three times in one day?

11 A. No. Like, one -- like, two times in one day.

12 Q. Two times in one day?

13 A. Yeah.

14 Q. Okay. I'm getting close, Arleth. I'm running out of
15 paper. Thank you, Arleth.

16 THE COURT: Redirect, Ms. Filo?

17 REDIRECT EXAMINATION

18 BY MS. FILO:

19 Q. How are you doing, Arleth?

20 A. Good.

21 Q. Are you doing okay?

22 A. Yes.

23 Q. All right. Arleth, the times that you were alone with
24 Mr. Chandler and he had the blindfold on you and he put this
25 round thing in your mouth, that happened at least three times
26 that you remember; right?

27 A. Yes.

28 Q. And you said one time nothing came out of the round

1 thing; right?

2 A. Yes.

3 Q. But the other two times it did?

4 A. The other time.

5 Q. The other time it did?

6 A. Yeah.

7 Q. Okay. Do you -- you said you don't -- do you remember
8 what that -- the water tasted -- the liquid tasted like?

9 A. No.

10 Q. Okay. You got some questions about coming to court and
11 testifying in court once before; right? Remember when you
12 came to court before and there was a lady judge?

13 A. Yeah.

14 Q. And when I asked you questions, did you tell the truth
15 then?

16 A. Yes.

17 Q. Okay. And how long ago was that, do you remember?

18 A. No.

19 Q. Now, does that seem like a long time ago or not so long
20 ago?

21 A. Kind of.

22 Q. Kind of a long time ago?

23 A. Yeah.

24 Q. Okay. So the liquid that was in your mouth, did it
25 taste like water?

26 A. No.

27 Q. No? Okay. And do you remember whether it tasted good
28 or bad?

1 A. No, no.

2 Q. You don't remember?

3 A. No.

4 Q. Okay.

5 MS. FILO: Your Honor, at this time, I would like
6 to read from the preliminary hearing transcript page 264,
7 lines 8 through 23.

8 "QUESTION: Okay. Um, so if -- Ms. A, I'm going to
9 give you a cup and I promise it's perfectly safe.
10 Can you take a sip of that water for me? What is
11 that?"

12 And you answered: "Water."

13 "QUESTION: Water? Okay. The stuff that came out
14 of the thing that was in your mouth when you were
15 in Mr. Chandler's classroom, did it taste like that
16 or did it taste like something else?

17 "ANSWER: Something else.

18 "QUESTION: Okay. So it did not taste like water?

19 "ANSWER: Yes.

20 "QUESTION: Correct?

21 "ANSWER: Yes.

22 "QUESTION: Okay. Did it taste good or bad?

23 "ANSWER: Bad."

24 BY MS. FILO:

25 Q. Do you remember testifying to that? Do you remember
26 saying those words last year?

27 A. Um --

28 Q. It's okay if you didn't. I just need to know.

1 A. Yes.

2 Q. You do remember saying that?

3 A. Yeah.

4 Q. Was that the truth?

5 A. Yes.

6 Q. Okay. Do you remember -- you said that the thing that
7 was in your mouth was squishy; right?

8 A. Yes.

9 Q. Could you tell me any other word that would help
10 describe what that thing was? Did it feel like anything else
11 that you have ever had in your mouth?

12 A. Yeah, it felt different.

13 Q. What?

14 A. It felt different, kind of.

15 Q. It felt different than things you had in your mouth
16 before?

17 A. Yes.

18 MR. MADDEN: Your Honor, I'm sorry. May we have
19 that read back? I don't think that's what I heard.

20 THE COURT: Okay. Let's have the last two
21 questions read back.

22 (Whereupon, the record was read.)

23 MR. MADDEN: I object, Your Honor, on misstates the
24 testimony. She said different, kind of, which is not the
25 same thing as different.

26 THE COURT: Okay. I'm going to allow the answer to
27 remain, and you both could clear it up.

28 MS. FILO: Thank you.

1 BY MS. FILO:

2 Q. You said it tasted "different, kind of." What -- did it
3 taste like anything else you ever had in your mouth before?

4 A. No.

5 Q. No? Did you describe the way it felt as skin? Do you
6 remember using that word in the past? It felt like skin?

7 A. Yes.

8 Q. Yes? And is that what you remember it feeling like?

9 A. Yes.

10 Q. Okay. Arleth, you said that there were these times that
11 you were alone with Mr. Chandler when the blindfold was put
12 on you; right?

13 A. Yes.

14 Q. Okay. And then you talked about this game with -- in
15 front of the whole class. Do you remember that?

16 A. Yes.

17 Q. You said that Suzanne played the game in front of the
18 whole class?

19 A. Yes.

20 Q. And Kevin played the game in -- you don't remember if
21 Kevin played the game in front of the whole class?

22 A. No, I don't remember.

23 Q. Okay. Did you play the game in front of the whole
24 class?

25 A. Yeah, only one time.

26 Q. One time. And what part of the game did you play? Do
27 you remember? In front of the whole class?

28 A. Only, like, I tasted something and I had to guess.

1 Q. Okay. You tasted something, and you said you had some
2 flavors: grape and strawberry, like candy or lollipops that
3 you had to taste?

4 A. Yes.

5 Q. Was that something that tasted different from what you
6 had in your mouth when you were in the classroom alone with
7 Mr. Chandler?

8 A. Sometimes it tasted -- it was like a lollipop and it
9 tasted the same.

10 Q. Okay. So when he gave you a lollipop, you knew when it
11 was a lollipop; right?

12 A. Yeah.

13 Q. Okay. But this thing where the liquid came out, did you
14 ever have that in your mouth when you were in front of the
15 whole class?

16 A. No.

17 Q. No? That was different; right?

18 A. Yeah.

19 Q. Okay. Okay. That's all the questions I have. Thank
20 you, Arleth.

21 THE COURT: How are you doing? We've gone a lot
22 longer than I normally go. But if you want to hear Mr.
23 Madden's final questions before we take a break, we could
24 keep going if you are okay? Or, I could take a break right
25 now. Do you want to keep going?

26 THE WITNESS: Yes.

27 THE COURT: Okay. And if you get tired, you need
28 to let me know. Okay? Just tell me, I'm right here.

1 Mr. Madden, recross?

2 RECROSS-EXAMINATION

3 BY MR. MADDEN:

4 Q. Arleth, did you ever tell anybody that -- the day you
5 were alone with Mr. Chandler and something came out of the
6 object in your mouth -- that it tasted like pee?

7 A. I don't remember.

8 Q. Thank you.

9 MR. MADDEN: I have no further questions.

10 THE COURT: You're done?

11 MS. FILO: I am.

12 THE COURT: Okay. You could step down. You are
13 done. Thank you very much.

14 Ladies and gentlemen, we're going to take the
15 afternoon recess at this time. I will order all members of
16 jury to report to the jury assembly room on the second floor
17 and we'll call you up in approximately 15 minutes. So we'll
18 be in recess.

19 (Whereupon, a brief recess was taken.)

20 THE COURT: Record will reflect the jury has
21 returned to the courtroom, both counsel are present, and Mr.
22 Chandler is present.

23 Ms. Filo.

24 MS. FILO: Thank you, Your Honor. The People call
25 Hilda Keller.

26 HILDA KELLER,

27 Being called as a witness on behalf of the People,
28 having been first duly sworn, was examined and testified as

1 follows:

2 THE CLERK: For the record, ma'am, could you please
3 state your first and last name and spell both for the record.

4 THE WITNESS: Hilda Keller. H-i-l-d-a,
5 K-e-l-l-e-r.

6 THE COURT: Thank you, ma'am. The lawyers will be
7 asking you some questions. Very important that you wait
8 until they finish their question before you begin your
9 answer, and please make every effort just to answer what is
10 being asked. And if the question calls for a yes or no
11 response, you need to verbally say yes or no. If you hear
12 objection, don't answer. I will rule. I will let you know
13 if you could answer it or not. Okay?

14 Direct examination.

15 MS. FILO: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MS. FILO:

18 Q. Good afternoon, Ms. Keller.

19 A. Good afternoon.

20 Q. You were previously employed as an elementary school
21 teacher at O.B. Whaley School; is that correct?

22 A. Yes.

23 Q. You are still an elementary school teacher just
24 someplace else?

25 A. Yes.

26 Q. Do you know from what years you were a teacher at O.B.
27 Whaley?

28 A. From 2000 to 2005, I believe.

1 Q. What grade did you teach there?

2 A. Kindergarten/first grade.

3 Q. During the period of your employment at O.B. Whaley,
4 were you a work colleague of Craig Chandler?

5 A. Yes.

6 Q. He was a fellow teacher?

7 A. Yes.

8 Q. So how many teachers were there at O.B. Whaley while you
9 were there?

10 A. I would have to say about 30 to 35, I'm thinking.

11 Q. So some co-workers you became really good friends with,
12 kind of good friends, occasional friends, occasional
13 acquaintances, and people you know because they happen to
14 work at the same place you do?

15 A. Correct, yes.

16 Q. In what category would you have put Mr. Chandler?

17 A. Just in acquaintances.

18 Q. Someone you knew simply because you worked together?

19 A. Correct, yes.

20 Q. Ms. Keller, I would like to ask you about an incident
21 that occurred in your classroom, where Mr. Chandler made --
22 you had a conversation with Mr. Chandler. Do you remember
23 the incident that I'm talking about?

24 A. Yes.

25 Q. Could you tell me what you remember about that incident?
26 How did it start?

27 A. Um, I was in my classroom at my desk with the door open.
28 I usually leave the door open to the courtyard. Mr. Chandler

1 came into my classroom and closed the door behind him and
2 stood at the corner of the room. As I was at my desk, which
3 was, you know, across from -- so it was, like, the door is
4 there and I'm at the desk, kind of the situation we're in
5 right now.

6 He just stood there for a minute or so, and so I
7 asked him what he was doing there, or what's going on, and he
8 started walking towards me and he was talking about how he
9 would like to take pictures of my feet and give me a foot
10 massage because he was taking a class, a massage therapy
11 class, and I said no. I felt very uncomfortable at that
12 point in time. I stood up and I tried to make light of it
13 like: No, you know. No. I'm wearing boots, you know. And
14 I got up and I just started walking him out the classroom and
15 opened the door and then he left.

16 Q. Okay. Ms. Keller, he only asked about massaging your
17 feet; is that correct?

18 A. Yes.

19 Q. He didn't ask if he could rub your shoulders or your
20 neck or --

21 A. No.

22 Q. Give you a head massage? It was your feet?

23 A. Yes.

24 Q. Did you think that was unusual?

25 A. Absolutely, yes.

26 Q. Was there anything else about the content of that
27 conversation that you found uncomfortable or unusual?

28 A. The whole situation was unusual. It was uncomfortable.

1 Coming in to ask to take pictures of my feet and asking if he
2 could massage them is not an appropriate conversation that
3 you have with a colleague.

4 Q. At the time of this specific conversation, were you
5 concerned that the comment was sexually motivated?

6 A. Yes.

7 Q. And in light of what became the entirety of your
8 interaction --

9 MR. MADDEN: May we approach the bench, Your Honor?

10 THE COURT: Let me hear the question first.

11 MR. MADDEN: I would rather we approach the bench
12 first.

13 THE COURT: Ask the question.

14 BY MS. FILO:

15 Q. In light of the entirety of your relationships, your
16 interactions with Mr. Chandler, did you then believe that
17 this comment was in fact sexually motivated?

18 A. Yes.

19 Q. Okay.

20 MS. FILO: That's all I have, Your Honor.

21 THE COURT: Cross-examination?

22 MR. MADDEN: No questions, Your Honor.

23 THE COURT: May this witness be excused?

24 MS. FILO: Yes.

25 THE COURT: You may step down and exit the
26 courtroom.

27 I'm going to ask, members of the jury, could you
28 just step outside the courtroom for just a minute? I will

1 bring you right back in.

2 (Whereupon, the jurors were excused and the
3 proceedings were had outside the presence of the jury.)

4 THE COURT: The jury has stepped outside the
5 courtroom. The reason I asked them to step outside the
6 courtroom is because I wanted to give you an opportunity, Mr.
7 Madden, to make the record.

8 MR. MADDEN: Thank you.

9 THE COURT: After I heard the question, the reason
10 I didn't at that time say let's approach is because that
11 question, in my opinion, was consistent with my pretrial
12 ruling, that Ms. Filo could ask that particular question, and
13 she did it in the order I had suggested. So that was the
14 reason, and it's clear this is over your objection.

15 MR. MADDEN: Thank you. You may be right on your
16 recollection and your ruling. What I would ask is that madam
17 court reporter read the specific question back to me because
18 I don't know -- there is a noun there. I don't know if it's
19 conversations or the entire situation.

20 THE COURT: Um, I will have her read it back to
21 you, but it was her entire, I think, contact with him, not
22 just the conversations. Am I correct on that?

23 MS. FILO: I think what I asked was it was the
24 entire interaction with him.

25 THE COURT: Okay. Rather than us try to speculate,
26 let's -- I will have -- if you could read back the specific
27 question Ms. Filo asked.

28 (Whereupon, the record was read.)

1 MR. MADDEN: I think that goes beyond your ruling,
2 Your Honor. She testified at the 402 hearing that her
3 opinion about whether or not it was sexually motivated
4 dependent on whether or not he was in fact in a class or
5 getting a license or whatever the situation was. This went
6 beyond that because this question necessarily included all of
7 the things that the Court said she could not talk about. And
8 although she couldn't talk about it directly, she was allowed
9 to formulate an opinion based on those things. That's why I
10 think it was an improper question and that's why I objected.

11 THE COURT: I understand. Again, my relevance of
12 the ruling, I think that question was allowable. I did
13 specifically order Ms. Filo not to go into any of these other
14 incidents, like the sexual harassment claim, et cetera. She
15 did say at the 402 hearing, because the way she felt, if he
16 was in fact taking a massage class, then she might feel
17 differently about it.

18 MR. MADDEN: Correct. So in other words, at the
19 402 hearing, her opinion was strictly based upon her
20 conclusion about whether or not it was sexual based strictly
21 on that issue, and that was not her question.

22 THE COURT: I think she said if there were proof
23 that he was actually engaged in that type of activity, then
24 how she felt may have been impacted by that additional
25 information.

26 MR. MADDEN: That's not exactly how I recall it,
27 but that's --

28 THE COURT: Generally. So I think that would have

1 been a fair question. But I'm not sure whether it will be
2 helpful or not because I don't know Mr. Chandler's history,
3 if there is evidence of that that exists. So I wasn't
4 restricting that type of question or going into that area.

5 MR. MADDEN: I understand that, and the Court was
6 clear about that at the 402 hearing and I appreciate that.

7 THE COURT: Okay. In light of the fact that you
8 asked to approach and I denied the request, I thought it was
9 important right now to give you an opportunity to put this on
10 the record so that we don't do it later on. That's the
11 reason I asked the jury to step out.

12 MR. MADDEN: I appreciate that, Your Honor. Thank
13 you.

14 MS. FILO: Judge, my only concern at this point --
15 I know it's 3:30. I have Arleth's MBI tape remaining to
16 play, and I don't -- I don't have --

17 MR. MADDEN: I agree with Ms. Filo, that would not
18 be a good thing to listen to now.

19 MS. FILO: I don't have a super, great recollection
20 of exactly how long it is, but --

21 MR. MADDEN: It's long.

22 THE COURT: Is it over an hour?

23 MR. MADDEN: I think it is.

24 MS. FILO: All I really know is that the transcript
25 that relates to it --

26 MR. MADDEN: Big.

27 MS. FILO: -- is 81 pages. In the past, we've
28 had -- I know Becky's was about 40 minutes and it's only 34

1 pages.

2 THE COURT: Okay. What I will do, then, if it's
3 both counsel's request, to recess and send the jury home.
4 I'm going to tell them the reason is the next thing we are
5 going to do is listen to Arleth's video/audio interview and
6 it's going to be more than an hour. My preference is not to
7 interrupt the playing of the tape.

8 MR. MADDEN: I will add parenthetically, that
9 I'm -- I think that we're well within the trial schedule that
10 has been laid out to the jurors. I think we're ahead of
11 schedule.

12 THE COURT: Thank you for letting me know that, but
13 that doesn't play in the part at all.

14 MR. MADDEN: I thought you would appreciate the
15 information.

16 THE COURT: I do. So both counsel would prefer we
17 not interrupt the playing of that and we'll do it either
18 Monday or next week sometime?

19 MS. FILO: Yes, Your Honor.

20 MR. MADDEN: Yes.

21 MS. FILO: It's going to take longer than an hour.

22 THE COURT: That's fine.

23 Then before I call the jury in, because we're going
24 to be recessing at this time, we're going to be coming back
25 on Monday, for benefit of counsel, so that they can prepare
26 over the weekend, I wanted to indicate that based on our
27 discussion yesterday, I was going to allow Ms. Filo to ask
28 Officer Pierce, that after his interview with Mr. Chandler,

1 when they were leaving the building, did you order him not to
2 go back to the class? I'm going to allow that question to be
3 asked over the defense objection. Obviously, this gives you
4 time to provide that information where Mr. Chandler was given
5 other information that says: No, you could go back. I'm not
6 going to limit it in cross-examination that you have no
7 authority to restrict him.

8 MR. MADDEN: I want to make sure I understand your
9 ruling. A couple of areas come to my mind that I want to
10 explore: One, I believe it's a fact that Det. Pierce
11 requested and received my client's cell phone. He left that
12 building that night without his cell phone.

13 THE COURT: Okay.

14 MR. MADDEN: Therefore, Sgt. Pierce was on
15 knowledge that my client's ability to receive a phone call
16 may have been impacted by the fact that he had a cell phone.

17 THE COURT: Okay.

18 MR. MADDEN: I also think that if Sgt. Pierce has
19 talked about being at the police department -- I'm too
20 involved into today's testimony to remember yesterday.

21 THE COURT: I understand.

22 MR. MADDEN: How much did he talk about, or did he
23 give any times or periods of time that Mr. Chandler was in
24 his presence at the police department. I don't think he gave
25 any.

26 THE COURT: Right. The only thing that Ms. Filo
27 indicated, that after the interview was completed and they
28 were walking out of the building, at the conclusion of the

1 interview, and apparently Mr. Chandler was going to go home
2 and go wherever he was going to go, Officer Pierce told him:
3 You are ordered not to go back to either the school or the
4 classroom; right?

5 MS. FILO: Right.

6 THE COURT: Which one?

7 DET. PIERCE: It was the school.

8 THE COURT: Okay. Ordered not to go back to the
9 school. Obviously, there is other issues that affect that.
10 You know, I think it's fair to ask him about the telephone
11 and having it left -- being left there, but I don't see the
12 relevance of the length of the interview, what was said.
13 Basically, he was just giving Mr. Chandler a directive not to
14 go back to the school. Whether that has any validity or not,
15 he was told to be on notice by the San Jose Police
16 Department.

17 MR. MADDEN: I'll have to call one of his
18 attorneys.

19 THE COURT: That's why I'm making a ruling now, Mr.
20 Madden, to give you that opportunity.

21 MR. MADDEN: Thank you. I appreciate that.

22 THE COURT: Even if the witness is not on the
23 witness list, because this just came to my attention, I will
24 give you an opportunity to address that concern.

25 MR. MADDEN: Thank you very much.

26 THE COURT: I want to make that ruling before I
27 brought the jury in. I will bring them in, I'll excuse them,
28 we'll recess until Monday.

1 MR. MADDEN: Thank you.

2 THE COURT: The record will reflect that the jury
3 has returned into the courtroom. Both counsel and Mr.
4 Chandler are still in the courtroom.

5 Thank you for your patience, ladies and gentlemen.
6 The next thing that we're scheduled to do is play the audio
7 and visual interview of Arleth. Counsel shared with me the
8 length of the interview is fairly long and it's going to take
9 longer than the time that we have this afternoon. It's my
10 preference that the jury hear that interview in one session
11 and not have it broken up, in fairness to the parties.

12 So in light of that, we're going to recess this
13 evening, and I'm going to order the jury to return Monday at
14 9:00 o'clock on the second floor jury assembly room and we'll
15 continue with the trial. Next week, early next week
16 sometime, I will give you an update and status of how the
17 case is proceeding. It's my understanding it's on schedule
18 or ahead of schedule.

19 So, ladies and gentlemen, have a safe weekend. I
20 understand it's going to have -- there is going to be good
21 weather, so enjoy. See you Monday morning. Thank you very
22 much for your patience and understanding as we proceed
23 through this trial.

24 I'll order both counsel here tomorrow -- excuse
25 me -- Monday at 9:00 a.m. in this department. We'll be in
26 recess.

27 (Whereupon, the Court took the evening recess.)
28

1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)

3

4 I, JAMIE L. MIXCO, HEREBY CERTIFY THAT:

5 The foregoing is a full, true, and correct
6 transcript of the testimony given and proceedings had in the
7 above-entitled action taken on the above-entitled date; that
8 it is a full, true, and correct transcript of the evidence
9 offered and received, acts and statements of the Court, also
10 all objections of counsel, and all matters to which the same
11 relate; that I reported the same in stenotype to the best of
12 my ability, being the duly appointed and official
13 stenographic reporter of said Court, and thereafter had the
14 same transcribed into typewriting as herein appears.

15 I further certify that I have complied with CCP
16 237(a)(2) in that all personal juror identifying information
17 has been redacted if applicable.

18

19 Dated:

20

21

22 _____
23 Jamie L. Mixco, C.S.R.
Certificate No. 12708

24 ATTENTION:
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EXHIBIT 3

(Vol. 12)

TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

---o0o---

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

Plaintiff - Respondent,)

v.)

No. C1223754

CRAIG RICHARD CHANDLER,)

Defendant - Appellant.)

COPY

VOLUME 12

PAGES 1070 - 1165

JULY 22, 2013

---o0o---

REPORTER'S TRANSCRIPT ON APPEAL
FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY

---o0o---

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: OFFICE OF THE ATTORNEY GENERAL
BY: KAMALA D. HARRIS,
Attorney General of the State
of California

FOR DEFENDANT-APPELLANT: In Propria Persona

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY
DEPARTMENT NO. 37

DEFENDANT.

JAMIE L. MIXCO
C.S.R. No. 12708

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1 San Jose, California July 22, 2013
2 PROCEEDINGS
3 THE COURT: Record will reflect all members of the
4 jury are present, both counsel are present, Mr. Chandler is
5 present in the courtroom as well.
6 And, Ms. Filo, you ready to continue with
7 presenting your evidence?
8 MS. FILO: Yes, Your Honor. Thank you, Your Honor.
9 People call Wendy. Your Honor, may I have just a minute?
10 THE COURT: Yes.
11 MS. FILO: Sorry. Thank you, Your Honor.
12 THE COURT: Welcome.
13 WENDY DOE,
14 Being called as a witness on behalf of the People,
15 having been first duly sworn, was examined and testified as
16 follows:
17 MS. FILO: Your Honor, for the record, the witness
18 is accompanied by an advocate.
19 THE COURT: Okay. Ma'am, just a reminder, you are
20 not to encourage, promote, or suggest in any manner any
21 question or response by Wendy. Okay?
22 THE ADVOCATE: Yes.
23 THE COURT: Good morning.
24 THE WITNESS: Good morning.
25 THE COURT: What's your name?
26 THE WITNESS: Wendy.
27 THE COURT: How do you spell it?
28 THE WITNESS: W-e-n-d-y.

1 THE COURT: And how old are you?

2 THE WITNESS: Eleven.

3 THE COURT: Okay. Wendy, could you move your chair
4 up a little bit? All the way to the witness stand. And Ms.
5 Filo is going to pull that microphone down. Okay? How is
6 that, Wendy?

7 THE WITNESS: Good.

8 THE COURT: Okay. As you know, I'm sure Ms. Filo
9 just briefly went over, that they are going to ask you some
10 questions and the rules we have in the courtroom. And I want
11 you to know that every eleven-year-old that I have ever
12 talked to in the courtroom has told me that they were very
13 nervous. So if you are nervous, it's okay. All right?

14 THE WITNESS: Okay.

15 THE COURT: Now, during this time, when Ms. Filo
16 asks you questions, at any time if you want a break -- we
17 call them recessES just like school when we stop for about 10
18 or 15 minutes. Okay? So during this time, if you ever need
19 a break or recess, let me know or let Ms. Filo know and we'll
20 take a break for you. Okay?

21 THE WITNESS: Okay.

22 THE COURT: Okay. All right.

23 Direct.

24 MS. FILO: Thank you, Your Honor.

25 DIRECT EXAMINATION

26 BY MS. FILO:

27 Q. Hi, Wendy.

28 A. Hi.

1 Q. Are you a little bit nervous?

2 A. Yes.

3 Q. Yes? Kind of weird to talk in front of people; right?

4 A. Um-hum.

5 Q. Yeah? Okay. Do you remember me talking to you a little
6 bit about the rules when you come to court?

7 A. Yes.

8 Q. What were the rules? Do you remember?

9 A. Always tell the truth, use real words, and --

10 Q. Make sure I finish my question before you start your
11 answer; right?

12 A. Right.

13 Q. Right. Perfect. Okay.

14 So can you promise that you are going to do all of
15 those things for me today?

16 A. Yes.

17 Q. And, Wendy, you are eleven now; right?

18 A. Yes.

19 Q. So you know the difference between real things and
20 make-believe things; right?

21 A. Yes.

22 Q. Yes? So if I talked about you coming to court, would
23 that be something that really happened?

24 A. Yes.

25 Q. Because you're here; right?

26 A. Yeah.

27 Q. And if I talked about you having lunch yesterday with
28 some fairies, would that be real or make-believe?

1 A. Make-believe.

2 Q. All right. You promise we're only going to talk about
3 things that are real; right?

4 A. Right.

5 Q. Okay. All right.

6 Wendy, so you are about to start what grade?

7 A. Sixth.

8 Q. Sixth grade. Okay. So off to middle school with you,
9 huh? Yes?

10 A. Yes.

11 Q. Okay. Wendy, I want to ask you about when you were in
12 elementary school. Where did you go to elementary school?

13 A. McCollam and then O.B. Whaley.

14 Q. O.B. Whaley. What grades were you in when you attended
15 O.B. Whaley?

16 A. Second, third, fourth, fifth, and sixth now.

17 Q. Okay. So who was your teacher last year?

18 A. You mean fifth grade or --

19 Q. Yes. Who was your teacher for fifth grade?

20 A. Ms. Balistreri and Nakano.

21 Q. Who was your teacher for fourth grade?

22 A. Ms. Filippini.

23 Q. Who was your teacher for third grade?

24 A. Mr. Chandler.

25 Q. Okay. So, Wendy, we have a little kind of chart up on
26 the board right there.

27 MS. FILO: Your Honor, may I approach?

28 THE COURT: Yes. Thank you.

1 BY MS. FILO:

2 Q. So, in 2013, just about a month ago, you finished fifth
3 grade with Ms. Balistreri; right?

4 A. Yes.

5 Q. And then in 2012, you were in fourth grade with
6 Ms. Filippini?

7 A. Yes.

8 Q. And the 2010 and 2011 year, you were in third grade with
9 Mr. Chandler; is that right?

10 A. Yes.

11 Q. Okay. So, Wendy, I would like to ask you some questions
12 about being in Mr. Chandler's class. Okay?

13 A. Okay.

14 Q. Okay. Who was your best friend in Mr. Chandler's class?

15 A. Ashley.

16 Q. Ashley. Okay. And what did you do with Ashley?

17 A. Um, we just hung out.

18 Q. Hung out? Go to lunch? Go to recess?

19 A. Yes.

20 Q. Stuff like that? Okay.

21 Did you have other girls that you -- or boys. I
22 guess you could have best friends that are boys. Other girls
23 or boys at school that you played a lot with or hung out a
24 lot with?

25 A. Yes.

26 Q. Who else?

27 A. Um, Christine and Melissa.

28 Q. Elisa?

1 A. Melissa.

2 Q. So that was kind of your group; right?

3 A. Yes.

4 Q. Are they still really good friends of yours?

5 A. Yes.

6 Q. Yes? Okay.

7 Wendy, when you were in Mr. Chandler's classroom,
8 do you remember anything that you learned when you were in
9 Mr. Chandler's classroom?

10 A. Not really.

11 Q. No? Anything special about what you learned in third
12 grade that you could remember?

13 A. No.

14 Q. No? Okay.

15 So, Wendy, I want to ask you if you were ever in a
16 classroom with Mr. Chandler all by yourself?

17 A. Yes.

18 Q. How many times? Do you know?

19 A. No. I think it was a little over ten.

20 Q. So, Wendy, when you say you were by yourself, what does
21 by yourself mean? Who else was there?

22 A. Me and Mr. Chandler.

23 Q. Okay. Just the two of you?

24 A. Yes.

25 Q. What did you do, if anything, when you were alone with
26 Mr. Chandler?

27 A. I will have to sit in a chair blindfolded and he would
28 put something in my mouth.

1 Q. Okay. Do you know where -- Wendy, I'm going to look at
2 the picture that's in A-1. Do you recognize what that is?

3 A. Yes.

4 Q. What is that?

5 A. The classroom.

6 Q. Whose classroom?

7 A. Mr. Chandler's.

8 Q. Where is -- where you would have to sit down in the
9 chair, is it in that picture?

10 A. Yes.

11 Q. Could you kind of -- there is a pointer right here,
12 could you show me where you would -- where Mr. Chandler would
13 have you sit?

14 A. (Indicating.)

15 Q. Okay. Right where that number one is that says "PXB"?

16 A. Yes.

17 Q. Okay. Where that post-it note is?

18 A. Yes.

19 Q. All right. And, Wendy, you said that Mr. Chandler would
20 have you sit in a chair; right?

21 A. Yes.

22 Q. What kind of chair was it?

23 A. Um, like a desk chair.

24 Q. Do you know what color it was?

25 A. Dark blue.

26 Q. Blue? Okay.

27 So there is a few chairs I think that you could see
28 in that picture. Did it look like any of the chairs in A-1?

- 1 A. I don't understand what A-1.
- 2 Q. The picture. Sorry.
- 3 A. Oh, yes.
- 4 Q. Okay. Could you show me what that -- I will give it to
- 5 you again. Could you show me with this pointer what it
- 6 looked like?
- 7 A. It looked like this one.
- 8 Q. Like one of the student chairs?
- 9 A. Yes.
- 10 Q. Okay. Wendy, how do you know what you were sitting in?
- 11 Did you -- how do you know what kind of chair it was?
- 12 A. When I walked in, it was, like, in front of the bookcase
- 13 and he had me sit in it.
- 14 Q. Okay. So you could see it at that point?
- 15 A. Yes.
- 16 Q. And then you said that you -- there was a blindfold?
- 17 A. Yes.
- 18 Q. Tell me about the blindfold.
- 19 A. It's like one of those, um, beauty school ones.
- 20 Q. Okay. Good description. What -- do you remember what
- 21 color it was or anything?
- 22 A. No.
- 23 Q. No? But it's -- what is it made out of? Do you know
- 24 what the --
- 25 A. I'm not sure.
- 26 Q. Is it made out of cloth like my clothes?
- 27 A. Um, it's a bit softer.
- 28 Q. Okay. Not like a Halloween mask? Not like plastic;

1 right?

2 A. No.

3 Q. No? And when you had this blindfold on, could you see
4 anything?

5 A. No.

6 Q. No? Okay. So you said that you would sit in this
7 chair; right?

8 A. Yes.

9 Q. And then how did the blindfold get on you?

10 A. He would put it on me or ask me to put it on.

11 Q. Wendy, did you know why you were doing this?

12 A. No.

13 Q. Did he ever tell you?

14 A. No.

15 Q. So you put the blindfold on and what happened next?

16 A. Um, he would put something in my mouth.

17 Q. Do you know what he put in your mouth?

18 A. No, but he said it was candy.

19 Q. Did it taste like candy?

20 A. No.

21 Q. No? Did it have any taste at all?

22 A. Like, one time or a few times it tasted like a little
23 strawberry.

24 Q. Okay. When you say "it," what is "it"? You say it
25 tasted like strawberry, what is "it"?

26 A. The thing that he called candy.

27 Q. That didn't taste like candy?

28 A. Yes.

1 Q. Do you know -- was it one thing that he put in your
2 mouth, or was it a number of things that he put in your
3 mouth?

4 A. I think two different things.

5 Q. Did you know what either of the things were?

6 A. Um, I think one was, like, real candy, but I don't know
7 what the other one was.

8 Q. So you knew that one was candy?

9 A. Yes.

10 Q. You could taste it and you knew that was regular candy?

11 A. Yes.

12 Q. What about the other thing? Could you tell me anything
13 about the other thing?

14 A. Um, it was kind of big and it just tasted a little like
15 strawberry.

16 MR. MADDEN: I'm sorry, Your Honor. It's --

17 THE COURT: I believe she said it's kind of big and
18 it tasted a little bit like strawberry; is that correct?

19 THE WITNESS: Yes.

20 BY MS. FILO:

21 Q. When you say "big," could you show me what you mean?

22 A. Um, like around this much.

23 Q. So, just for the record, Wendy, you put kind of your
24 middle finger and your thumb, but not quite all the way
25 closed, almost like a C?

26 A. Yeah.

27 Q. Is that right?

28 A. Yes.

1 Q. So it was bigger than what would happen if you put your
2 fingers together?

3 A. Yeah.

4 Q. It was bigger than that?

5 A. Yeah.

6 Q. Okay. What did he do with that -- that sort of round
7 thing? That's what he put in your mouth?

8 A. Yes.

9 Q. What would happen when that thing was in your mouth?
10 Did anything happen?

11 A. Like, he would put his hand on the back of my head and
12 move it forward, back and forth.

13 Q. Okay. Just one hand?

14 A. Yeah, one hand.

15 Q. Could you show me what you mean, Wendy?

16 A. Like that.

17 Q. Could you do what you are telling me with your own hand
18 and your own head?

19 A. The candy, he would put through and back out and repeat.

20 Q. Okay. Was he doing anything with the hand that was on
21 your head?

22 A. Um, move it forward and backward.

23 Q. Okay. So he was pushing your head forward?

24 A. Yes.

25 Q. And you said that this C-shaped thing was going in and
26 out of your mouth?

27 A. Yes.

28 Q. Okay. Wendy, how long did that happen?

1 A. Um, a few months, I guess.

2 Q. It happened a number of times over a few months?

3 MR. MADDEN: Objection. That isn't what she said,
4 Your Honor.

5 THE COURT: Okay. If you could read me back the
6 response?

7 (Whereupon, the record was read.)

8 THE COURT: Okay. Could you rephrase your last
9 question?

10 MS. FILO: Sure.

11 BY MS. FILO:

12 Q. When you were in the classroom and you had this
13 blindfold on and this round thing was in your mouth, how long
14 did that -- how long did it go on for?

15 A. Oh; um, like, I guess about five minutes or less.

16 Q. Wendy, while this was happening, did Mr. Chandler say
17 anything to you?

18 A. No.

19 Q. Did he give you any instructions?

20 A. Um, one time I bit down on it and he told me not to.
21 Because he said it was candy, so I thought I was supposed to
22 eat it.

23 Q. So you bit down on it and he said "don't bite"?

24 A. Yes.

25 Q. Did you think anything about that direction?

26 A. Not really.

27 Q. Okay.

28 A. I -- just in my head, I asked myself why since -- how

1 did he know that I did since it was candy?

2 Q. So you thought to yourself: How did he know that I bit
3 down?

4 A. Yes.

5 Q. Wendy, how did this -- how did it end? After the five
6 minutes, what happened?

7 A. Um, he would give me a lollipop and then I could go out
8 to recess.

9 Q. Okay. Did you -- how did the blindfolds go away?

10 A. Um, I would just take it off.

11 Q. Did you take it off on your own, or did Mr. Chandler
12 tell you to take it off?

13 A. He told me to.

14 Q. Okay. And then he gave you a lollipop and then you
15 could go out to recess?

16 A. Yes.

17 Q. Wendy, while this was happening, was the door to the
18 classroom open or closed?

19 A. Closed.

20 Q. So you told us that he said to you "don't bite;" right?

21 A. Yes.

22 Q. Do you remember him saying anything else while this
23 thing was in your mouth?

24 A. No.

25 Q. Did you hear anything else while the thing was in your
26 mouth?

27 A. Um, one time I heard, like, kind of metal hitting
28 together and then I think he placed something on the desk.

1 Q. You said you heard metal. Do you have any idea what
2 that metal was?

3 A. I think it was a belt.

4 Q. A belt?

5 A. Yeah.

6 Q. That's what it sounded like to you?

7 A. Yes.

8 Q. Okay. Do you hear anything else, Wendy?

9 A. Yeah. I heard footsteps and the water running.

10 Q. Did you have a sink in your classroom with Mr. Chandler?

11 A. Yes.

12 Q. Was that the only place that there was water in the
13 classroom?

14 A. Yes.

15 Q. Okay. Is that what you think you heard? Like, water
16 coming from the sink?

17 A. Yes.

18 Q. Okay. While you heard that, Wendy, did you still have
19 the blindfold on?

20 A. Yes.

21 Q. So you couldn't see where Mr. Chandler was going or what
22 he was doing?

23 A. Yes.

24 Q. But you could hear the water?

25 A. Right.

26 Q. Okay. Wendy, did Mr. Chandler ever have you lay down in
27 the classroom?

28 A. Yes.

1 Q. Could you tell me about that?

2 A. Um, I would do this with my friend Melissa. We would
3 lay down on the same spot where I had to sit in the chair and
4 he made us take off our shoes and socks and, like, put us in
5 this bag and then he would put something between our legs and
6 rub it together.

7 Q. Okay. So the bag that he put over you, he put over your
8 head?

9 A. Yes.

10 Q. And you said -- what kind of bag was it?

11 A. It was a PE bag?

12 Q. A PE bag?

13 A. Yes.

14 Q. Do you know -- was it soft or scratchy, or do you know
15 anything about it?

16 A. It was soft.

17 Q. Soft? Okay. Was it made of fabric, too, like clothing?

18 A. Yes.

19 Q. You could breathe? You don't have any trouble
20 breathing; right?

21 A. Yes.

22 Q. Could you see anything that was happening?

23 A. No.

24 Q. You said that you were laying down on the floor; right?

25 A. Yes.

26 Q. Were you laying on your -- how were you laying?

27 A. I was laying on my stomach.

28 Q. And so your feet were -- the bottoms of your feet were

1 kind of facing the ceiling; right?

2 A. Yes.

3 Q. Is that right?

4 A. Yes.

5 Q. And did you keep your feet on the floor or did you move
6 them up, or what did you do with your feet?

7 A. Um, he would take them and move them a little bit up and
8 then rub it together with something.

9 Q. Okay. So he actually rubbed your feet together?

10 A. No. Like, he put something between them and rubbed it
11 together.

12 Q. So he put something in between your feet?

13 A. Yes.

14 Q. And then could you show me what -- like, could you show
15 me with your hands what happened with the thing that was
16 between your feet?

17 A. Like, (Indicating.)

18 Q. Could you lift your hands up a little bit?

19 A. (Indicating.)

20 Q. So he rubbed something in between your feet like this?

21 A. Yes.

22 Q. Do you know what shape that thing was?

23 A. No, but it's kind of round.

24 Q. Okay. And did he say anything while that was happening?

25 A. No.

26 Q. Did he put -- what was between your feet, did he put
27 that any place else?

28 A. No.

1 Q. Just between your feet?

2 A. Yes.

3 Q. And you were with Melissa when this happened; right?

4 A. Yes.

5 Q. Did you guys have the same bag on? Was it one bag over
6 two of you?

7 A. No. We both got our own.

8 Q. Okay. So each of you had a bag on?

9 A. Yes.

10 Q. And did you take your socks and your shoes off before
11 the bag was on your head or after?

12 A. Before.

13 Q. And so you saw Melissa take off her shoes and socks,
14 too?

15 A. Yes.

16 Q. And then he had you both lay down?

17 A. Yes.

18 Q. And covered your eyes?

19 A. Yes.

20 Q. Wendy, do you know about how many times that happened,
21 where he had you lay down on the ground?

22 A. Um, I think somewhere around 15, I think.

23 Q. Okay. So this is going to be kind of a complicated
24 question and I'll do my best to make it clear. Okay?

25 A. Okay.

26 Q. Do you know whether or not the feet -- this thing with
27 your feet happened before he had you sit in the chair, did it
28 happen while you were -- over time while you were also in the

1 chair, or after you were in the chair? Does that make sense?

2 MR. MADDEN: Objection, Your Honor. Compound

3 question.

4 THE WITNESS: No.

5 THE COURT: I will allow the answer to remain. So

6 did that make sense? And she said "no."

7 MS. FILO: Okay. I'll try again.

8 BY MS. FILO:

9 Q. So you said that the -- when you would lay down on the

10 ground, that happened 15 times?

11 A. Around 15.

12 Q. Okay. And in the chair you said about 10 times; right?

13 A. Yes.

14 Q. So what I'm trying to figure out is, did all of the 15

15 times with the feet happen before any of the 10 times with

16 the -- where you were sitting in the chair?

17 A. Um, before.

18 Q. Okay. So all of the feet stuff came first?

19 A. Yes.

20 Q. And then you moved on to the chair?

21 A. Yes.

22 Q. Okay. But when you were in the chair, Melissa wasn't

23 there?

24 A. Um, sometimes she was.

25 Q. Okay. How many times was Melissa there? Do you know?

26 Maybe I don't need a number. Could you say sometimes? Half

27 the time? More than half the time? Could you give me

28 anything like that?

1 MR. MADDEN: Objection, Your Honor. Compound
2 question.

3 THE COURT: Overruled. You may answer.

4 THE WITNESS: More than half.

5 BY MS. FILO:

6 Q. More than half the times?

7 A. Yes.

8 Q. Okay. But there were times that you were there all
9 alone without Melissa?

10 A. Yes.

11 Q. Wendy, did you ever talk to anybody while you were in
12 third grade about what was happening with Mr. Chandler and
13 this blindfold?

14 A. Um, one time when we were done, we were walking through
15 the hallway and Melissa said that she saw Mr. Chandler, um,
16 like, pick his belt up from the desk.

17 Q. Is that the only time you ever talked to anybody about
18 what was happening with this blindfold while you were still
19 in third grade?

20 A. Yes, I think so.

21 Q. Okay. Because after that, you've now talked to a number
22 of people; right?

23 A. Yes.

24 Q. Okay. You've talked to -- you had to come to court once
25 before?

26 A. (Shakes head up and down.)

27 Q. Yes?

28 A. Yes.

1 Q. And you talked to the police officers; right?

2 A. Right.

3 Q. Okay. Do you know Arleth?

4 A. Yes.

5 Q. Was she in Mr. Chandler's class with you?

6 A. Um, no. She went with someone else.

7 Q. She went with someone else? What do you mean?

8 A. Um, like, after a little while, me and Melissa stopped
9 going and then, um, two other of my friends, Arleth and
10 Christine, would go to his classroom instead.

11 Q. Okay. So did you talk to Arleth about this blindfold
12 thing when you were still in third grade?

13 A. No.

14 Q. No? Okay. And how about when you were in fourth grade
15 in Ms. Filippini's class, did you ever talk to your friends
16 at school about this blindfold game with Mr. Chandler?

17 A. No.

18 Q. No? Okay.

19 So, Wendy, when you had this blindfold on and this
20 kind of round thing was in your mouth --

21 A. Yes.

22 Q. -- how did it make you feel?

23 A. I was a little confused because, um, before anything
24 happened, Melissa said that she was going to go to the
25 classroom so that she could help Mr. Chandler, like, clean
26 the classroom and help him, but we never got to do that.

27 Q. Okay. So you were confused because that wasn't why you
28 thought you were supposed to be there; right?

1 A. Right.

2 Q. Okay. When this -- when you were sitting in this chair
3 with this blindfold on, did you think it was fun?

4 A. Not really.

5 Q. No? Did you think anything about -- other than being
6 confused, did the -- sorry. I have to start over. That was
7 a bad question. Okay?

8 A. Okay.

9 Q. So when you're sitting there, you said you were a little
10 bit confused; right?

11 A. Yes.

12 Q. Did you feel any other way? Was there any other way
13 that you felt in addition to being confused?

14 A. No.

15 Q. No? Okay.

16 Wendy, do you remember who the first person was you
17 ever told about being in the classroom with Mr. Chandler and
18 the blindfold?

19 A. Um, I think maybe Christine. I can't remember much.

20 Q. Okay. Okay.

21 Wendy, I'm going to look over my notes real quick
22 and see if I missed anything. All right?

23 A. Okay.

24 Q. Okay. Okay.

25 Wendy, when did it happen during the day? Like,
26 when during your school day did it happen that you came in
27 and laid down on the floor?

28 A. Um, sometimes before recess in the morning, and I think

1 a few times before, like, after lunch.

2 Q. Okay. So when you say before recess, what does that
3 mean?

4 A. Um, like, it's at 11, I think. And when everyone left,
5 he would keep us back.

6 Q. Okay. So it was recess time?

7 A. Yes.

8 Q. And all of the other kids had gone to go play?

9 A. Yes.

10 Q. But you didn't get to go play?

11 A. No.

12 Q. Okay. Okay.

13 Wendy, have you been taught to do what your school
14 teachers tell you to do?

15 A. Yes.

16 Q. Yes? You don't get in trouble at school, do you?

17 A. No.

18 Q. No? You're a good student; right?

19 A. Right.

20 Q. Good girl. Okay. Thank you, Wendy. That's all I have.

21 THE COURT: Thank you, Ms. Filo.

22 Wendy, Mr. Madden is going to ask you some
23 questions. Are you okay to keep going?

24 THE WITNESS: Yes.

25 THE COURT: Okay. Remember, if you need a break,
26 let me know. Okay?

27 THE WITNESS: Okay.

28 THE COURT: And I think there is some water there

1 in case you get thirsty.

2 THE WITNESS: Okay.

3 THE COURT: Mr. Madden, cross-examination.

4 MR. MADDEN: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. MADDEN:

7 Q. Wendy, my name is Mr. Madden and we have never met;
8 right?

9 A. Right.

10 Q. Okay. You could hear me okay from where I'm sitting?

11 A. Yes.

12 Q. Okay. If you can't hear me or any of my questions, just
13 let me know. You could raise your hand or say: Wait a
14 minute, and I'll speak up. Okay?

15 A. Okay.

16 Q. Also, if I ask a question and you don't understand my
17 question, don't answer a question that you don't understand.
18 Okay?

19 A. Okay.

20 Q. In other words, if what I'm saying doesn't make sense to
21 you, or if I'm asking a word that you don't understand, just
22 raise your hand or say: Excuse me. I don't understand what
23 you mean. And if you do that, then I'll use another word or
24 ask you another question to make sure that you do understand
25 it. Okay?

26 A. Okay.

27 Q. All right. So when you were in Mr. Chandler's class at
28 O.B. Whaley School, everyone in the class was in the third

1 grade; right?

2 A. Right.

3 Q. Okay. And Arleth was in that class; right?

4 A. Right.

5 Q. All right. Do you know Laurie?

6 A. No.

7 Q. You don't remember a Laurie being in your class?

8 A. No.

9 Q. Okay. Do you remember an Isabell being in your class?

10 A. No.

11 Q. Okay. And do you remember a Becky being in your class?

12 A. No.

13 Q. Okay. But Melissa was in your class?

14 A. Yes.

15 Q. Melissa was your best friend?

16 A. Um, one of them.

17 Q. Okay. And is she still in your class?

18 A. Um, she was this year.

19 Q. Okay. But we'll have to see next year; right?

20 A. Right.

21 Q. Okay. You are going to another school next year?

22 A. No. Same school.

23 Q. I'm sorry?

24 A. I'm going to the same school.

25 Q. They have sixth grade at O.B. Whaley?

26 A. Yes.

27 Q. Okay. Now, I would like to ask you some questions about

28 adults that you have talked about this case with. Okay?

1 A. Yes.

2 Q. All right. Do you remember ever talking to your mother
3 about what happened in Mr. Chandler's class?

4 A. No.

5 Q. Okay. So any time from the time that all of this
6 happened until now, you've never discussed this with your
7 mother?

8 A. Um, last time I went to court I think she heard, but
9 that was the only time.

10 Q. All right. We'll get to that in a minute.

11 How about your father? Did you ever talk to your
12 father about what happened in Mr. Chandler's class?

13 A. No.

14 Q. So during the year that you were in Mr. Chandler's
15 class, you never felt so uncomfortable about anything that
16 happened that you told your mother or your father?

17 A. Yes.

18 Q. That's correct?

19 A. Yes.

20 Q. Okay. Thank you.

21 At any time that you were with Mr. Chandler in the
22 third grade, did you -- did he ever make you cry?

23 A. No.

24 Q. Did he ever make you upset?

25 A. No.

26 Q. Okay. So if you didn't tell your mother and you didn't
27 tell your father the year that it happened, would then the
28 first adult that you talked about be a police officer that

1 came to O.B. Whaley School to talk to you?

2 A. Yes.

3 Q. Okay. Do you remember the officer's name?

4 A. No.

5 Q. Okay. Thank you.

6 And by the way, if I ask you a question and you
7 don't remember, it's perfectly fine to say that you don't
8 know or you don't remember. Okay?

9 A. Okay.

10 Q. For all of us, as time goes by we don't remember as
11 well; is that right?

12 A. Right.

13 Q. Okay. So, for example, what you're saying today is
14 about something that happened a long time ago; right?

15 A. Right.

16 Q. And you may have forgotten some things?

17 A. Yes.

18 Q. Okay. So if you've forgotten, that's all you have to do
19 is tell me that you've forgotten or you don't remember.
20 Okay?

21 A. Okay.

22 Q. But if you do remember, I want you to tell me -- I want
23 you to answer. Okay?

24 A. Okay.

25 Q. Okay. So you talked to a police officer who came to
26 O.B. Whaley School; correct?

27 A. Correct.

28 Q. And do you remember where that meeting took place

1 between you and that officer?

2 A. Um, somewhere in the office.

3 Q. Where the principal is?

4 A. Yes.

5 Q. Like when you go to school, the first thing you go by is
6 the office; right? It's kind of a building with a bunch of
7 offices in it?

8 A. Yes.

9 Q. Okay. So it was a room inside that office building;
10 right?

11 A. Yes.

12 Q. Okay. Was the officer wearing clothes like I'm wearing,
13 or was the officer wearing a uniform?

14 A. I don't remember.

15 Q. Thank you. And did you also -- before we move on.

16 So that officer asked you a lot of things about
17 what you and Mr. Chandler did the year that you were in his
18 third grade class; right?

19 A. Right.

20 Q. Okay. And then shortly after that meeting with the
21 officer at school, you went in a car to downtown San Jose;
22 right?

23 A. Yes.

24 Q. Into kind of a special little room?

25 A. Yes.

26 Q. And that room had like a child-size table and a
27 child-size chair; right?

28 A. Yes.

1 Q. And it appeared to be a child's room; right?

2 A. Yes.

3 Q. Okay. And the person that you spoke with in that little
4 room downtown, was that the same person that interviewed you
5 or spoke with you in the office at O.B. Whaley School?

6 A. Yes.

7 Q. It's the same person?

8 A. Yes.

9 Q. Are you sure of that?

10 A. Yes.

11 Q. Okay. And that conversation downtown in the child's
12 room, did that take place on the same day as the conversation
13 at school or was it a different day?

14 A. Um, it was the same day.

15 Q. Okay. Now, you also talked about this case in the
16 courtroom, a different courtroom, a little over a year ago;
17 right?

18 A. Right.

19 Q. And it was basically in the same building; right?

20 A. Yes.

21 Q. You remember it's the same because you had to go through
22 the metal detector when you came in; right?

23 A. Yes.

24 Q. There was a line that you had to wait in before you came
25 in; right?

26 A. Yes.

27 Q. All right. And Ms. Filo was at that court hearing;
28 right?

1 A. Yes.

2 Q. She asked you questions?

3 A. Yes.

4 Q. And then there was a man and Det. Pierce was at that
5 hearing; is that correct?

6 A. Um, sorry. I didn't understand.

7 Q. Okay. Thank you. Do you recognize the man that I'm
8 pointing to here, sitting right next to me?

9 A. No.

10 Q. Okay. He may look a little different than he looked
11 then. I forgot about that. We'll leave that.

12 Do you remember answering questions by another
13 lawyer who represented Mr. Chandler?

14 A. Yes.

15 Q. And he was a big, tall, heavysset man with a mustache;
16 right?

17 A. I think so.

18 Q. Okay. You remember his name?

19 A. No.

20 Q. Okay. Now, when you were at that court hearing a little
21 over a year ago, was your memory about what happened with Mr.
22 Chandler more clear in your mind? Was it more clear a year
23 ago than it is today?

24 A. Um, it was more clear.

25 Q. I'm sorry?

26 A. It was more clear at that time.

27 Q. Right. And it was probably even more clear when you
28 talked to the police officer at the school and at the little

1 children's room; right?

2 A. Right.

3 Q. Okay. Do you remember when you were in the third
4 grade -- I'm sorry. Let me take that question back.

5 So when you were in the third grade, all of your
6 classmates were third-graders? It was a third grade class;
7 right?

8 A. Right.

9 Q. Have you ever been in a combination grade where there
10 was students from one year and another?

11 A. No, but I'm going to.

12 Q. You are going to?

13 A. Yes.

14 Q. Maybe next year?

15 A. Yes.

16 Q. Okay. The year you were with Mr. Chandler, it was just
17 third grade?

18 A. Yes.

19 Q. Arleth was in that class?

20 A. Yes.

21 Q. And you remember one of your best friends being Melissa?

22 A. Yes.

23 Q. Okay. Now, if I understand what you said today, the
24 things that you did in Mr. Chandler's class when you were
25 blindfolded involved either him putting something on your
26 feet or putting something in your mouth; is that correct?

27 A. Yes.

28 Q. Okay. Now, when you were putting things on your feet --

1 let me take that back.

2 It was Mr. Chandler that put things on your feet;
3 right?

4 A. Yes.

5 Q. When he was putting things on your feet and you were
6 blindfolded, your friend Melissa was always with you; right?

7 A. Could you repeat it, please?

8 Q. Yes. On the times that you were with Mr. Chandler in
9 the classroom and blindfolded, Melissa was always right next
10 to you and she was blindfolded too; right?

11 A. She wasn't with me all the time.

12 Q. She was not with you all the time when Mr. Chandler put
13 something on your feet?

14 A. Oh, wait. Yes.

15 Q. That's correct; right?

16 A. Yes.

17 Q. Okay. Now you remember.

18 THE COURT: Well, Mr. Madden, your previous
19 question, you said all the time, basically. You didn't
20 distinguish feet and --

21 MR. MADDEN: I'm sorry.

22 THE COURT: -- and mouth.

23 BY MR. MADDEN:

24 Q. Did I confuse you?

25 A. Yes.

26 Q. I apologize.

27 MR. MADDEN: So, thank you, Your Honor.

28 THE COURT: Welcome.

1 BY MR. MADDEN:

2 Q. We're just going to right now talk about feet. Okay?

3 A. Okay.

4 Q. You and Mr. Chandler were never alone, that is, just you
5 and Mr. Chandler with you blindfolded any time he put
6 anything on your feet; correct?

7 A. Sorry. I didn't understand.

8 Q. I'm sorry?

9 A. Sorry. I didn't understand it.

10 Q. Thank you. I will try it again.

11 Do you remember a year ago telling the lawyers
12 that --

13 MS. FILO: Objection, Your Honor. Calls for
14 hearsay.

15 MR. MADDEN: I'm trying to refresh her
16 recollection, Your Honor.

17 MS. FILO: She doesn't say she didn't remember.

18 THE COURT: If you could reask the question because
19 she doesn't understand it, I think.

20 MR. MADDEN: All right.

21 BY MR. MADDEN:

22 Q. Were you ever alone with Mr. Chandler and blindfolded,
23 just you and Mr. Chandler, when he was putting objects on
24 your feet?

25 A. No.

26 Q. Okay. That means that there was someone besides you and
27 Mr. Chandler there when he was putting objects on your feet;
28 right?

1 A. Yes.

2 Q. And who was that person?

3 A. Melissa.

4 Q. Okay. So on all of those occasions -- on all of those
5 times, Melissa was right next to you; right?

6 A. Yes.

7 Q. And when he was putting objects on your feet, he was
8 also putting objects on Melissa's feet; right?

9 A. Yes.

10 Q. But you were both blindfolded at the same time; is that
11 correct?

12 A. Yes.

13 Q. How do you know he was putting objects on Melissa's feet
14 if you were blindfolded?

15 A. Um, he would -- like, he would do one of us first, and
16 then he said he was going to do it to the other, so he would
17 stop and go to the other person that's next.

18 Q. Okay. Did sometimes -- did he always start with the
19 same person or did he start with different children?

20 A. Um, sometimes he would start with other people, like
21 different.

22 Q. Which other people?

23 A. Um, me or Melissa.

24 Q. Okay. Sometimes he started with Melissa, sometimes he
25 started with you; right?

26 A. Yes.

27 Q. So in all of the times that he did this, put something
28 on your feet, you were blindfolded and Melissa was

1 blindfolded; right?

2 A. Yes.

3 Q. You put your blindfold on or did Mr. Chandler put the
4 blindfold on?

5 A. Um, I don't remember.

6 Q. Do you remember if he put Melissa's blindfold on or
7 Melissa put it on?

8 A. I don't remember.

9 Q. Okay. All the times that he put something on your feet
10 and when he was done, you took your blindfold off; right?

11 A. Yes.

12 Q. And on all of those times, he told you to take your
13 blindfold off; right?

14 A. Yes.

15 Q. Where was Mr. Chandler when you took your blindfold off?

16 A. I don't remember.

17 Q. So if you don't remember where he was, you don't
18 remember what he was doing; right?

19 A. Right.

20 Q. When you took your blindfold off, did you see anything
21 that was unusual?

22 A. No.

23 Q. Okay. And these times that you were with Melissa with
24 Mr. Chandler putting something on your feet, was this always
25 at the morning recess?

26 A. Not all the time.

27 Q. What other times do you remember, other than the morning
28 recess, where this happened?

1 A. After lunch.

2 Q. Is there a recess after lunch?

3 A. Yes.

4 Q. Okay. Do you know how long the recess in the morning
5 is?

6 A. Um, I think it's around 20 to 30 minutes.

7 Q. Okay. And I believe you stated earlier today that at
8 the time of the morning recess, this took about -- this whole
9 thing with you and Melissa took about five minutes?

10 A. Yes.

11 Q. Then after that you went to recess; right?

12 A. Yes.

13 Q. So in that five minutes or so, he puts things on your
14 feet and put things on Melissa's feet; right?

15 A. Yes.

16 Q. Okay. Now, there were a number of different things that
17 he actually put on your feet; right?

18 A. No.

19 Q. All right. Do you remember, for example, feeling the
20 top of any scissors, metal scissors, on your feet?

21 A. No.

22 Q. Do you remember feeling any glue sticks on the top of
23 your feet?

24 A. I don't think so.

25 Q. It sounds like you're not sure about that one; is that
26 right?

27 A. Yes.

28 Q. Okay. Do you remember him putting any paper clips on

1 your feet?

2 A. No.

3 Q. Do you remember him putting any erasers on your feet?

4 A. I'm not sure about that one.

5 Q. He might have done that?

6 A. Yes.

7 Q. Okay. So when he was putting all of these things that
8 we just talked about on your feet, he was asking you to guess
9 what they were; right?

10 A. Um, I don't know. I don't remember.

11 Q. But it sounded like you're not so sure about that?

12 A. Yes.

13 Q. Okay. Do you remember any of these times where you felt
14 something really light on your feet being rubbed over your
15 leg or your feet?

16 A. No.

17 Q. Do you remember any time after things were put on your
18 feet Mr. Chandler showing you and Melissa a purple piece of
19 cloth and a red piece of cloth?

20 A. Yes.

21 Q. All right. That was -- and he told you that was
22 something that went over your feet; right?

23 A. Yes.

24 Q. Okay. And you did feel something very light go over
25 your feet; right?

26 MS. FILO: Objection, Your Honor. Asked and
27 answered.

28 THE COURT: Sustained.

1 BY MR. MADDEN:

2 Q. You believed Mr. Chandler when he told you that either
3 the red or the purple cloth was what he had put on your foot
4 or leg; right?

5 A. Yes.

6 Q. Because what he told you --

7 MS. FILO: Objection, Your Honor. Calls for
8 hearsay.

9 MR. MADDEN: No. I said if she believed.

10 THE COURT: Well, this is another question. I
11 haven't heard your question.

12 MR. MADDEN: All right.

13 BY MR. MADDEN:

14 Q. Now, when you and Melissa were laying on the floor, did
15 you always have the PE bags over your head or sometimes you
16 have the regular blindfold?

17 A. We always had the PE bags over our heads.

18 Q. Okay. And did you get the PE bags yourself?

19 A. Um, I think he handed them to us when we walked in.

20 Q. Okay. Now, the times that you were with Melissa and he
21 put things on your feet, were you always on the floor in
22 about the same place?

23 A. Yes.

24 Q. And could you tell me where that place would be looking
25 at the diagram? I'm going to get a -- there is a pointer up
26 here that I'm going to use.

27 MR. MADDEN: May I approach, Your Honor?

28 THE COURT: Yes. Thank you.

1 BY MR. MADDEN:

2 Q. All right. This is -- I'm going to say this for the
3 record. This is just lawyer stuff. This is Exhibit A-1.

4 This is a photograph of the -- of Mr. Chandler's
5 classroom; right?

6 A. Yes.

7 Q. All right. Now, the people that took many photographs
8 took it about the same time that they came to school to talk
9 to you. Okay?

10 A. Okay.

11 Q. In other words, it wasn't taken in the year that you
12 were in Mr. Chandler's class. Do you understand what I mean?

13 A. Yes.

14 Q. Okay. But I'm assuming that this is still how Mr.
15 Chandler's class looked to you when you were in the third
16 grade; right?

17 A. Yes.

18 Q. Does anything look any different?

19 A. Um, that red bucket that is next to the --

20 Q. In the middle of the diagram there appears to be a
21 plastic tub with some either rope or plastic rope handles on
22 it. Is that what you mean?

23 A. Yes.

24 Q. You don't remember that being in there when you were in
25 the third grade?

26 A. Yes.

27 Q. Okay. Thank you. Anything else you could think of?

28 A. No.

1 Q. Okay. In the third grade, you remember the desk being
2 in the same place?

3 A. Yes.

4 Q. Okay. And could you just go to the diagram with this
5 marker? You could take a couple of steps out of your chair.
6 Be careful. There is a step there. Just point to the area
7 where you and Melissa were for all of the feet touchings by
8 Mr. Chandler.

9 A. Um, it was around here. (Indicating.)

10 Q. Okay. Thank you. You could sit down. So you are
11 pointing to a yellow post-it with the number and letters 2
12 PXB on it. Okay? Fair enough?

13 A. Yes.

14 Q. Okay. And did you ever see Mr. Chandler go into the
15 cabinet behind his desk before he got -- before he put things
16 on your feet?

17 A. Yes.

18 Q. Did you see him take things out?

19 A. No.

20 Q. All right. But did he go into the cabinet before he put
21 things on your feet?

22 A. Yes.

23 Q. Okay. What about after he put things on your feet?

24 A. Um, sometimes he would look inside there.

25 Q. I'm sorry. I'm going to ask you -- the problem is I'm
26 having -- other than the fact that I have old ears, I'm going
27 to move this microphone so that you could -- when you look at
28 me, I know that it's -- it might be distracting. This way

1 it'll pick up your voice. Okay?

2 A. Okay.

3 Q. Thank you.

4 So on the times that -- if I understand you
5 correctly, you were always in the area that you pointed on
6 the diagram sitting on the ground with Melissa; right?

7 A. Yes.

8 Q. And every time you took your shoes and socks off or
9 sometimes -- that's a bad question.

10 Um, did you take your shoes and socks off every
11 time he put something on your feet?

12 A. Yes.

13 Q. Did Melissa do the same thing?

14 A. Yes.

15 Q. Okay. When you finished, sometimes -- let me ask
16 another question. Let me ask you this question about this
17 diagram. This is People's A-6.

18 Does that appear to you to be the inside of the
19 cabinet or closet that we're talking about?

20 A. Yes.

21 Q. All right. And is this where Mr. Chandler kept his
22 supplies? School supplies?

23 A. Yes.

24 Q. All right. Like paper clips, papers, erasers, and glue
25 sticks, and markers, and things like that?

26 A. Yes.

27 Q. All right. I don't think I need to stand next to you
28 right now because I'm going to ask you some other questions.

1 Do you remember when you were in the third grade in
2 Mr. Chandler's class, a time when the whole class was playing
3 the taste game and the feel game?

4 A. Yes.

5 Q. You do remember that?

6 A. Yes.

7 Q. Okay. And how many times did that happen?

8 A. I think only one time.

9 Q. One time? Okay.

10 Do you remember what part of the school year it was
11 that you saw the whole class do these games?

12 A. Um, it was the same year that I was in his class.

13 Q. And is it correct that the game that was played by the
14 whole class was after you had done all of these practice
15 games with Melissa and Mr. Chandler?

16 MS. FILO: Objection, Your Honor. Misstates the
17 testimony.

18 THE COURT: Sustained. If you'd rephrase, Mr.
19 Madden.

20 MR. MADDEN: All right.

21 BY MR. MADDEN:

22 Q. Do you remember Mr. Chandler telling you and Melissa --

23 MS. FILO: Objection, Your Honor. Calls for
24 hearsay.

25 THE COURT: Um, sustained.

26 BY MR. MADDEN:

27 Q. Do you think you did the whole class game after the
28 individual sessions between you and Melissa and Mr. Chandler?

1 A. Yes.

2 Q. How are you doing, Wendy?

3 A. Okay.

4 Q. You look like you are getting a little fidgety to me.
5 Would you like to take a few minutes break?

6 A. Yes, please.

7 MR. MADDEN: Your Honor.

8 THE COURT: Okay. Ladies and gentlemen, we'll take
9 the morning break. I'll order all members of the jury to
10 report to the jury assembly room on the second floor and
11 we'll call you back at 10:45 on the court clock. We'll be in
12 recess.

13 (Whereupon, a brief recess was taken.)

14 THE COURT: Record will reflect all members of the
15 jury are present, both counsel are present, Mr. Chandler is
16 present in the courtroom.

17 Mr. Madden, you were continuing with your cross.

18 MR. MADDEN: Thank you, Your Honor.

19 BY MR. MADDEN:

20 Q. Becky, [sic] I want to start by telling you the same
21 thing. If you get a little fidgety or tired -- I'm sorry.
22 Excuse me. Please forgive me for calling you Becky.

23 Wendy, if you're starting to feel tired or you need
24 to move around or take a break, just let Judge Bocanegra know
25 and we're happy to help you. Okay?

26 A. Okay.

27 Q. All right. Okay.

28 So I would like to go back to the subject of the

1 feel and the taste game that you saw in front of the whole
2 class. Okay?

3 A. Okay.

4 Q. We'll just call that the whole class game. Okay?

5 A. Okay.

6 Q. When the whole class game was played, all of the
7 students were there; right?

8 A. Yes.

9 Q. And you remember that being played one time?

10 A. Yes.

11 Q. All right. Now, is that something you're sure about or
12 could have been more?

13 A. I am pretty sure.

14 Q. Okay. And the whole class game, did you participate in
15 tasting or feeling anything yourself?

16 A. I don't remember.

17 Q. All right. You might have?

18 A. Yes.

19 Q. Okay. And did you see any other types of feel or taste
20 games in front of the whole class that you hadn't seen
21 before?

22 A. No.

23 Q. When you saw the feel game in front of the whole class,
24 did it always involve Mr. Chandler putting objects on the
25 bare feet of students?

26 A. No.

27 Q. What did he put the objects on?

28 A. Huh? Could you repeat?

1 Q. Yes. Let me ask you -- obviously you didn't understand.
2 Must have been my fault.

3 You have talked about Mr. Chandler putting objects
4 on your feet when you were with Mr. Chandler and Melissa;
5 right?

6 A. Yes.

7 Q. I'm talking about the whole class game, and you
8 might have -- Mr. Chandler might have put objects on your
9 feet during the whole class game, but you're not sure if he
10 did it to you in the whole class game; right?

11 MS. FILO: Objection, Your Honor. Misstates the
12 testimony.

13 THE COURT: Sustained. She said no.

14 MR. MADDEN: She said she did not.

15 THE COURT: Earlier, when you asked the question:
16 If you put objects on the feet, she said no.

17 MR. MADDEN: Fine. Okay.

18 BY MR. MADDEN:

19 Q. In the whole class game, the children in the class who
20 were participating, were they all blindfolded?

21 A. Um, yes.

22 Q. Okay. Whether they were doing the taste game or the
23 feel game, they had their eyes covered; right?

24 A. Yes.

25 Q. And they had to guess either what was in their mouth or
26 they had to guess what was on their feet or their leg; right?

27 A. They only guess what was in their mouth. He didn't do
28 anything with their feet.

1 Q. That didn't happen at all?

2 A. Yes.

3 Q. This -- the whole class game?

4 A. Yes.

5 Q. Okay. Sometimes I'm not paying enough attention. All
6 right.

7 Did Mr. Chandler always put things -- was it just
8 your feet or was it also your leg?

9 A. Just my feet.

10 Q. And would it be just the top of your feet, the side of
11 your feet, or the bottom of your feet?

12 A. Bottom of my feet.

13 Q. All right. Again, Melissa was always right next to you;
14 right?

15 A. Yes.

16 Q. Then after he would finish putting things on your feet,
17 he stopped and then he put things on Melissa's feet; right?

18 A. Yes.

19 Q. And the times that Melissa went first, he put things on
20 her feet, then he put things on your feet; right?

21 A. Yes.

22 Q. Now, Mr. Chandler never told you or Melissa not to tell
23 anybody about this, did he?

24 A. Um, I think he told us one time.

25 Q. And what did he tell you?

26 A. He said that not to tell anyone, um, because he was,
27 like, giving us little gifts.

28 Q. I'm sorry. You are speaking a little bit too fast and a

1 little bit too low. Could you slow down a little bit and
2 speak up a little bit?

3 A. Um, he told us once to not tell anyone, because one time
4 he gave us, like, little presents and he didn't want anyone
5 to know because he thought that they might want to come and
6 do the same things so they could get gifts.

7 Q. Okay. Mr. Chandler never told you not to tell your
8 parents, did he?

9 A. No.

10 Q. All right. Did you ever tell anybody that any of the
11 objects that Mr. Chandler put on your feet felt like skin?

12 A. Could you repeat it, please?

13 Q. Yes. Did you ever tell anybody at any time that the
14 object that -- any object that Mr. Chandler put on your feet
15 felt like skin?

16 A. Yes.

17 Q. Okay. Now, would that be the time that right after that
18 Mr. Chandler showed you a red cloth and a purple cloth?

19 A. Yes.

20 Q. Okay. And so tell me what you remember about how the
21 cloth felt when it went on the bottom of your feet.

22 A. I didn't feel anything that felt like cloth.

23 Q. You felt something very light against your skin; right?

24 A. Not really.

25 Q. But he showed you a piece of cloth right after he did
26 that; right?

27 A. Yes.

28 Q. Okay. When the class game was played, was everybody

1 having a good time?

2 A. Yes.

3 Q. People were laughing?

4 A. Yes.

5 Q. Okay. All right.

6 So I would like to leave the feet questions and I
7 would like to start to ask you about mouth questions. Okay?

8 A. Okay.

9 Q. First, at any time that Mr. Chandler put anything in
10 your mouth, did anything come out of the thing that was in
11 your mouth?

12 A. No.

13 Q. Okay. Was Melissa always with you and Mr. Chandler in
14 the class when he put something in your mouth?

15 MS. FILO: Objection, Your Honor. Asked and
16 answered.

17 THE COURT: Sustained.

18 BY MR. MADDEN:

19 Q. Do you remember talking about the one time that you bit
20 on what was in your mouth?

21 A. Yes.

22 Q. I believe you stated before that happened, he told you
23 it was candy; right?

24 A. Yes.

25 Q. And I think you said that you thought it was candy and
26 that's why you bit it?

27 A. Yes.

28 Q. And how far did you bite into the object that was in

1 your mouth?

2 A. Only a little.

3 Q. Do you remember testifying about a year ago that you bit
4 about halfway into it?

5 MS. FILO: Objection, Your Honor. Hearsay.

6 MR. MADDEN: Asking if it refreshes her
7 recollection, Your Honor.

8 THE COURT: Um, I'm going to sustain the objection
9 based on the way the question was asked.

10 BY MR. MADDEN:

11 Q. The object that you bit into tasted like candy; right?

12 A. No.

13 Q. Just not like any candy you tasted before?

14 A. Yes.

15 Q. So it was a candy that you didn't recognize?

16 MS. FILO: Objection, Your Honor. Misstates the
17 testimony. He is now confusing the witness.

18 THE COURT: Sustained.

19 BY MR. MADDEN:

20 Q. You thought that what you bit into was candy; right?

21 MS. FILO: Objection, Your Honor. Asked and
22 answered and misstates the testimony.

23 THE COURT: Sustained.

24 BY MR. MADDEN:

25 Q. Did what you bite into have a strawberry flavor?

26 MS. FILO: Objection. Asked and answered.

27 THE COURT: I'll -- I believe it has been asked
28 before and answered. I will let you answer that question one

1 more time.

2 THE WITNESS: Could you repeat it?

3 BY MR. MADDEN:

4 Q. Yes.

5 MR. MADDEN: Well, may I -- excuse me, Your Honor.
6 May I impose on madam court reporter to read back?

7 THE COURT: I believe it was what you bit on tasted
8 like strawberry.

9 THE WITNESS: It only tasted a little like
10 strawberry.

11 BY MR. MADDEN:

12 Q. Okay.

13 Now, the times that you were in Mr. Chandler's
14 class, you and Melissa, and blindfolded and tasting things in
15 your mouth. Okay?

16 A. Okay.

17 Q. Was that just like the -- when you talked about the
18 feet? In other words, the two of you were always together?

19 A. Not always.

20 Q. How many times, if you remember -- let me ask it a
21 different way.

22 Were you ever alone with Mr. Chandler in the class
23 in tasting anything in your mouth?

24 A. Yes.

25 Q. That was one time?

26 A. Yes.

27 Q. Only one time?

28 MS. FILO: Objection, Your Honor. Misstates the

1 testimony.

2 THE COURT: Sustained.

3 BY MR. MADDEN:

4 Q. Only one time alone with Mr. Chandler?

5 MS. FILO: Objection, Your Honor. Misstates the
6 testimony.

7 THE COURT: Sustained.

8 BY MR. MADDEN:

9 Q. Do you remember Mr. Chandler, when you were alone in the
10 class with him, putting candy in your mouth when you were
11 blindfolded and then asking you to describe it?

12 A. I don't remember.

13 Q. But he might have?

14 A. Maybe.

15 Q. All right. Have you ever had a candy that was -- are
16 you familiar -- strike that.

17 Are you familiar with the candy known as sour
18 strings?

19 A. No.

20 Q. Have you ever had a candy that was soft on the outside
21 and soft on the inside?

22 MS. FILO: Objection, Your Honor. Relevance.

23 THE COURT: Sustained.

24 He's going to ask you another question.

25 THE WITNESS: Could you repeat it?

26 THE COURT: I'm sorry.

27 BY MR. MADDEN:

28 Q. I'm looking at my notes right now. I'm sorry. I'm not

1 waiting for you. That's my fault.

2 THE COURT: What I said is he was going to ask you
3 another question. Okay? You are doing well.

4 BY MR. MADDEN:

5 Q. Wendy, do you remember -- during your third grade year
6 with Mr. Chandler, do you remember Mr. Chandler that year
7 talking about a girl who couldn't see and who couldn't hear?

8 A. No.

9 Q. Do you know or remember the name Helen Keller?

10 A. No.

11 Q. Do you remember if Mr. Chandler ever talked about Helen
12 Keller during your third grade year?

13 A. No.

14 Q. Do you remember Mr. Chandler ever putting lollipops into
15 your mouth and you had to guess the flavor?

16 A. Yes.

17 Q. How many flavors do you remember tasting?

18 A. I think, like, a little bit over five.

19 Q. And could you tell me what the little bit over five
20 would have included?

21 A. Um, blueberry, strawberry, soda, melon, um, mystery.

22 Q. I didn't hear the last one.

23 A. Mystery.

24 Q. Mystery?

25 A. Yeah.

26 Q. Okay. That's okay. That's very good.

27 On the time that you bit into the candy, Mr.
28 Chandler said don't bite it; right?

1 A. Yes.

2 Q. He didn't say "owe" or "ouch" or anything like that, did
3 he?

4 A. No.

5 Q. All right. And the object that was in your mouth, at
6 that time when you bit it, he just left it there; right?

7 A. Yeah.

8 Q. Didn't pull it out?

9 A. No.

10 Q. Okay. I'm still looking at my notes. Okay? I'll be
11 with you in a minute.

12 Now, when any of the objects was in your mouth, did
13 the object just basically stay on your tongue?

14 A. No.

15 Q. Where else did it go?

16 A. It like -- um, it will go back and forth.

17 Q. You mean you said he would take it out and put another
18 one in?

19 A. No. Like, it would be in my mouth and he would, like,
20 push it back and then pull it forward.

21 Q. Push it where?

22 A. Like, into -- a little bit deeper into my mouth.

23 Q. Little bit deeper, but still on your tongue?

24 A. Yes.

25 Q. You never choked or gagged or anything like that; right?

26 A. No.

27 Q. Okay. It didn't fill up your mouth; right?

28 A. No.

1 Q. Okay.

2 MR. MADDEN: One moment, please, Your Honor.

3 Your Honor, I would like to read from the
4 preliminary examination transcript dated -- Vol. 2 of 3,
5 dated May 22, 2012.

6 MS. FILO: Objection, Your Honor. Hearsay.

7 MR. MADDEN: Page 244.

8 THE COURT: Okay. There is an objection, hearsay
9 objection. The reason for reading?

10 MR. MADDEN: Is a prior inconsistent statement.

11 THE COURT: Okay. Would you show the portions to
12 Ms. Filo so she could take a look at it and see if she has an
13 objection or not.

14 BY MR. MADDEN:

15 Q. Becky, [sic] do you remember --

16 THE COURT: Ms. Filo had an opportunity to look at
17 that portion?

18 MS. FILO: It's fine, Your Honor.

19 THE COURT: Okay. Mr. Madden, you are going to
20 read certain sections of the --

21 MR. MADDEN: Yes. I'm going to read two lines of
22 the preliminary examination transcript. For the record, this
23 is preliminary examination of People v. Chandler from Vol. 2
24 of 3. This will be page 244, lines 19 and 20.

25 MS. FILO: Your Honor, if I might? Could I ask
26 counsel to read through to page -- sorry -- to line 28 so we
27 could get the rest of the context?

28 MR. MADDEN: That's something you are free to do.

1 I'm just reading the part that I want to read.

2 THE COURT: I guess you could do it on redirect.

3 MR. MADDEN: Thank you. All right.

4 BY MR. MADDEN:

5 Q. Do you remember this question, Wendy?

6 "Okay. How far into it did you bite?" And your
7 answer: "Uh, somewhere in the middle."

8 Do you remember that?

9 A. No.

10 Q. Okay. Now, the time that the candy was in your mouth
11 and you bit it, did Mr. Chandler -- while the candy was in
12 your mouth, did Mr. Chandler ever say anything to you other
13 than don't bite it?

14 MS. FILO: Objection, Your Honor. May we approach?

15 THE COURT: Yes.

16 (Whereupon, there was a discussion at the bench.)

17 THE COURT: There wasn't a legal basis for the
18 objection, Mr. Madden, on the record. Mr. Madden, you are
19 going to ask another question.

20 MR. MADDEN: Thank you, Your Honor. Your Honor, I
21 have no further questions at this time.

22 THE COURT: Thank you.

23 Redirect, Ms. Filo?

24 MS. FILO: Thank you, Your Honor.

25 REDIRECT EXAMINATION

26 BY MS. FILO:

27 Q. Okay. How are you doing, Wendy? Are you doing okay?

28 A. Yeah.

1 Q. Okay. Wendy, you said that this thing he put in your
2 mouth was -- you held up your hand like this and you made
3 kind of a C; right?

4 A. Yes.

5 Q. And that was the shape that it was?

6 A. Yes.

7 Q. Do you remember anything else about what it felt like
8 when it was in your mouth? Do you have any other words that
9 you could use that would tell us what it felt like?

10 A. Um, it felt like skin. It was kind of slippery.

11 Q. Skin and kind of slippery?

12 A. Yes.

13 Q. Okay. Are those the best words that you could think of?

14 A. Yes.

15 Q. All right. And then you said that he was sort of
16 pushing your head into this thing; right?

17 A. Yes.

18 Q. Did the thing move or did your head move?

19 A. Um, my head and the thing.

20 Q. Okay. So they both kind of moved?

21 A. Yes.

22 Q. All right. Were you moving your head by yourself or was
23 Mr. Chandler pushing your head?

24 A. Mr. Chandler was pushing my head.

25 Q. Okay. All right.

26 So when Mr. Chandler showed you that piece of
27 cloth -- you remember what Mr. Madden asked you about that
28 piece of fabric?

1 A. Um, no.

2 Q. Okay. Mr. Madden asked you whether Mr. Chandler showed
3 you a piece of red fabric or cloth and a piece of purple
4 fabric; right?

5 A. Yes.

6 Q. Do you remember those questions?

7 A. Yes.

8 Q. All right. So I just want to make sure I understand.
9 Mr. Madden -- I mean, Mr. Chandler told you that's what he
10 put on your feet; right?

11 A. He -- yes.

12 Q. Yes?

13 A. Yes.

14 Q. But that's not what it felt like; right?

15 A. Yes.

16 Q. Am I correct?

17 A. Yes.

18 Q. Okay. Wendy, you were asked whether or not you were
19 supposed to guess what was in your mouth. Do you remember
20 getting that question from Mr. Madden?

21 A. Yes.

22 Q. And do you remember whether you were supposed to guess
23 or not?

24 A. No.

25 Q. How about when he was rubbing something on your feet?
26 Were you supposed to guess what that was?

27 A. No.

28 Q. You were not supposed to guess?

1 A. I don't think so.

2 Q. Okay. Wendy, were you one of the people that played
3 that -- this exercise in front of the whole class, where he
4 put something in your mouth?

5 A. No.

6 Q. No? You weren't one of those people?

7 A. Wait. Could you repeat it?

8 Q. Sure. So you said that you watched the whole class and
9 Mr. Chandler would take people and there was one time where
10 he took people in front of the whole class and he put things
11 in their mouth and have them guess what it was. Do you
12 remember talking about that?

13 A. Yes.

14 Q. Were you one of those people that played in front of the
15 whole class?

16 A. I don't remember.

17 Q. You don't remember?

18 A. No.

19 Q. Okay. So you remember when you bit down on this thing
20 that was in your mouth? You remember that?

21 A. Yes.

22 Q. Do you know how much you bit?

23 A. Only a little.

24 Q. Only a little. Okay.

25 So when you bit down, did pieces break away?

26 A. No.

27 Q. So it didn't break up into lots of different pieces, did
28 it?

1 A. No.

2 Q. No? It stayed as the thing it was?

3 A. Yes.

4 Q. Do you remember if it was hard or soft? Do you have any
5 description like that?

6 A. Um, it was sort of soft.

7 Q. Okay. And it didn't taste like any kind of food you
8 ever had before; right?

9 A. Right.

10 Q. The only word you could use to describe it is skin?

11 A. Yes.

12 Q. Okay. Wendy, that's all the questions I have.

13 THE COURT: Thank you.

14 Recross, Mr. Madden?

15 MR. MADDEN: Thank you, Your Honor.

16 RECROSS-EXAMINATION

17 BY MR. MADDEN:

18 Q. Wendy, is today the first time that you ever described
19 any of the objects in your mouth as feeling like skin and
20 slippery?

21 A. No.

22 Q. Did you tell the police officer who came to the school
23 that?

24 A. I think so.

25 Q. Did you tell the police officer at the children's room
26 that?

27 A. Yes.

28 Q. And did you tell the court about a year ago that?

1 A. Yes.

2 Q. Okay. Thank you.

3 THE COURT: Anything further, Ms. Filo?

4 MS. FILO: No. Thank you, Your Honor.

5 THE COURT: May this witness be excused?

6 MS. FILO: Yes, Your Honor.

7 THE COURT: Okay. Wendy, thank you. You are done
8 and you could step down and you could leave the courtroom.
9 Okay?

10 Ms. Filo, as I understand it, you're next going to
11 play some audio and video interviews?

12 MS. FILO: Yes, Your Honor.

13 THE COURT: And which is the first one you are
14 going to be --

15 MS. FILO: Arleth. It's about 45 minutes to an
16 hour.

17 THE COURT: Okay.

18 Ladies and gentlemen, I'm not saying this because
19 of the comments I made this morning about starting on time,
20 but we had a long morning recess because Wendy did very well
21 testifying, but she wasn't feeling very well during the break
22 and needed some time. Her stomach wasn't feeling well, so I
23 wanted to make sure she was completely comfortable going
24 forward. And if not, we were just going to bring her back
25 another day. Obviously, she felt better and went forward.

26 There is an issue that I have to take up sometime
27 today, and rather than start the audio, I'm going to address
28 it this morning and excuse the jury and order that you come

1 back at 1:30 to the jury assembly room on the second floor.
2 And when you return to the courtroom, we'll start the playing
3 of the video interviews.

4 So, all members of the jury, you are excused at
5 this time. We'll see you at 1:30.

6 (Whereupon, the jurors were excused and the
7 proceedings were had outside the presence of the jury.)

8 THE COURT: The jury has left the courtroom. Both
9 counsel and Mr. Chandler is present. In light of the morning
10 and how it played out, I think what I wanted to do, Counsel,
11 was take this opportunity to address the issue that Mr.
12 Madden brought up this morning concerning Officer Pierce's
13 directive to Mr. Chandler, just generally, about not
14 returning. And I know, Mr. Madden, you wanted to put some
15 things on the record. I had ruled tentatively before and I
16 would like to take this time to make a ruling. And I know,
17 Mr. Madden, you had some concerns, and I think in fairness,
18 since we did this informally, we could put this on the record
19 at this time.

20 MR. MADDEN: Yes, Your Honor. I believe on -- not
21 Friday, but I think Thursday, the People indicated they
22 intended to call Officer Pierce to the stand to offer a
23 statement, or a part of a conversation that he had with Mr.
24 Chandler as Mr. Chandler was walking out of the San Jose
25 Police Department sometime after 8:00 p.m. on January the
26 9th.

27 I indicated to the Court that my concern is that I
28 have read -- strike that. Last Thursday, it's my

1 recollection that Ms. Filo said or indicated that the officer
2 will be testifying that he told Chandler not to go to school
3 the next morning, which of course would have been January the
4 10th. And my concern about that testimony is that it is not
5 contained at all in the transcript or in the videotape of Mr.
6 Chandler's interview, which was at least two hours on the
7 evening of the 9th.

8 So I listened to that interview and I have a
9 transcription of that interview. There is no directive at
10 the end of that conversation from the officer directing Mr.
11 Chandler to do anything other than there is -- I'm giving
12 just a short paraphrase. The officer indicated that it's
13 about 8:00 o'clock: Here's what I'm going to do. You are
14 going to give me your wife's phone number. I'm going to call
15 her. She's going to come pick you up. Call the school or
16 call Ms. Peery to find out what you are supposed to do. All
17 right?

18 As the Court knows, there has been evidence that my
19 client indeed went to the O.B. Whaley School and to his
20 classroom early on the morning of the 10th. The problem that
21 I'm having is that the People are not offering -- they stated
22 that they are not going to offer any portion of Mr.
23 Chandler's interview with Det. Pierce. What's pointed out to
24 the Court was that Mr. Chandler had been in school that day;
25 that he been called to the office; that he had a discussion
26 with the principal, Lea Peery, or multiple discussions. He
27 was advised that the matter had been reported to the police,
28 that he was asked to wait, and he did wait for a period of

1 time, but the police officer did not arrive.

2 At or about 2:00 p.m. he left the school to go
3 home, and that he was arrested by, I believe, Officer
4 Latrendress in front of his home, handcuffed, put in a police
5 vehicle, brought down to the SAIU at the San Jose Police
6 Department, I'm assuming, sometime shortly after 2:00
7 o'clock. I believe that Mr. Chandler was in handcuffs for a
8 minimum of two to three hours before the interview and that
9 he was interviewed for at least two more hours.

10 I want to be able to get into those facts in
11 cross-examining the officer because I think they are relevant
12 as to the mental and emotional condition Mr. Chandler was in
13 when he was released that night. But I'm concerned about how
14 much of that I could get into without referring to the
15 statements, and I'm concerned about my ability to potentially
16 impeach Det. Pierce with what I believe he is going to state
17 he said on the way out of the building, but it is not on
18 tape. That's my concern.

19 THE COURT: Thank you.

20 Ms. Filo, do you wish to respond?

21 MS. FILO: Well, I think they're kind of separate
22 issues, and I think everyone acknowledges -- I also have a
23 transcript of the recording of Mr. Chandler's interview with
24 Det. Pierce. We have never asserted, nor has it ever been
25 claimed that this directive was captured on the tape.

26 I believe what Officer Pierce will testify to is
27 that the interview was over and he was actually escorting Mr.
28 Chandler out of the building because it was after-hours and

1 he would have to walk him through the secured part of the
2 police department in order to get him to an exit. And it was
3 during that exit process that he told Mr. Chandler not to
4 come back; that he should not go to the school the following
5 day. It's reflected in the police report, something that was
6 produced to counsel. It's, you know, been in everybody's
7 possession since the time that the police report was created.

8 I don't see how the defendant's having been in
9 custody for several hours is relevant to this one directive.
10 The one directive is: Don't go back to the school. I mean,
11 I think what Mr. Madden wants to say is that Mr. Chandler was
12 somehow fried and didn't hear this information or didn't
13 process this information. And I don't think there is any
14 reason why the fact that Mr. Chandler was there being
15 interviewed needs to be part of that discussion.

16 The police were contacted at 9:00 o'clock that
17 morning. I have no problem informing the jury that the
18 directive, don't go back to the school, was at 9:00 o'clock
19 that night. Clearly, the police had been to the campus, they
20 had interviewed people, Mr. Chandler had been either sent
21 home or -- I mean, he is made aware that he is now under
22 investigation for allegations of child molestation, but I
23 have no problem telling the jury that.

24 What I object to is in any way referencing the idea
25 that there was an interview of Mr. Chandler because it then
26 makes clear to the jury they are not hearing something that's
27 been excluded under the Rules of Evidence. So I think it's
28 unfair to have that reference be any part of the record when

1 it's just alluding to hearsay; it's just not letting in the
2 hearsay. I mean, I have no -- I think all of those arguments
3 could be effectively made without referencing the interview
4 or the interview process.

5 THE COURT: Mr. Madden, any final comments?

6 MR. MADDEN: Well, there is a couple of more facts.
7 I believe the evidence is that Mr. Chandler -- the first
8 notice that he was placed on administrative leave was the
9 conversations he had with Dan Deguara in the classroom that
10 next morning. He had no knowledge that night. He'd never
11 spoken to Ms. Peery. I believe the facts of the case are
12 that -- include that Mr. Chandler had voluntarily given his
13 cell phone to Det. Pierce, and it was Det. Pierce's -- and in
14 Det. Pierce's possession from that night until I believe it
15 still is. It's never been returned to Mr. Chandler.

16 So I think those facts are important, and I think
17 that I have to be able to allow -- I think the Court could
18 perhaps fashion a remedy, if he doesn't like the word
19 "interview," we don't have to say that, but handcuffed and
20 therefore -- whatever the number of hours was. I'm guessing
21 it was no more than six, but probably not far off.

22 THE COURT: Okay. Thank you.

23 Taking into consideration everything that's been
24 said at this particular hearing and the comments made on
25 Thursday, sort of trying to make a determination of the
26 relevance of the information both sides want to get into, and
27 I think at this stage of the trial, doing a 352 analysis
28 concerning this particular area, when Officer Pierce

1 testifies, I'll allow the People to ask him the time and
2 location and the directive he made to Mr. Chandler.

3 Earlier -- you didn't put this on the record, but
4 earlier, Mr. Madden, you also indicated that you thought you
5 should be allowed to get into evidence that Officer Pierce
6 told Mr. Chandler to contact Ms. Peery in the morning.

7 MR. MADDEN: Yes.

8 THE COURT: Do you have any responses to that
9 particular piece of evidence, Ms. Filo? It's basically a
10 directive.

11 MS. FILO: I'm fine with that.

12 THE COURT: I will allow that as well.

13 Concerning Mr. Chandler's emotional and mental
14 state, at this point of the trial, I think this is
15 information that the defense may put on in their defense to
16 explain why Mr. Chandler went to the -- went to the school
17 the next morning. How that would be presented, I can't think
18 of any way other than Mr. Chandler testifying. And if that
19 occurred, obviously Officer Pierce is here to be recalled.

20 So over Mr. Madden's objection, I'm not going to
21 allow any other information other than the time, the
22 location, and what Officer Pierce told Mr. Chandler. I don't
23 see it as to this particular piece of evidence being relevant
24 that he was arrested and handcuffed, because if we get into
25 the interview, then there is no statement coming in during
26 the People's case in chief. Also, I think it's clear that
27 Mr. Chandler was aware that he was under investigation for
28 sexual misconduct that occurred, not only at the school, but

1 in his classroom.

2 So that's the Court's ruling on this particular
3 issue.

4 Yes, Mr. Madden.

5 MR. MADDEN: I'm sorry, Your Honor. So what -- is
6 there anything I could ask Sgt. Pierce -- Det. Pierce on
7 cross-examination?

8 THE COURT: Not about the fact that he was
9 arrested, handcuffed, and interviewed. I don't think that's
10 relevant to the directive at this point. I know your
11 position is that, well, Mr. Chandler's emotional and mental
12 state is relevant to explain why he went to the school the
13 next day, but it doesn't explain it. It's basically
14 confusing and misleading to the jury at this stage. I'm not
15 saying it's not relevant during the defense's case in chief.
16 I think a lot more becomes relevant, depending on whether Mr.
17 Chandler testifies and what you present.

18 That's the ruling at least on that portion of
19 Officer Pierce's conduct or contacts with Mr. Chandler. I
20 know there was other questions that were covered on direct
21 and Mr. Madden will go into that.

22 MR. MADDEN: What about the -- from the transcript
23 interview of my client, where he did not tell him not to go
24 to school? Could I ask the officer: Earlier, you did not
25 mention not going to school?

26 THE COURT: Well, I think that the question that --
27 at 8:00 o'clock, for example, when they were in the lobby
28 leaving and you told him not to go back to the school: At

1 any other time that day, did you tell him not to go back to
2 the school? And I believe the answer will be no. So I think
3 that question is fair, but I think your questions are trying
4 to indirectly get into the fact that he was in the police
5 station being interviewed, and I'm keeping that out at this
6 point.

7 MR. MADDEN: I understand, Your Honor.

8 THE COURT: Okay. Thank you. Again, this is
9 obviously -- this Court's ruling is over Mr. Madden's
10 objection.

11 MR. MADDEN: Thank you.

12 THE COURT: See you all at 1:30.

13 MS. FILO: Thank you, Your Honor.

14 (Whereupon, the Court took the noon recess.)
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Record will reflect all members of the jury are present, both counsel are present, Mr. Chandler is in the courtroom.

MS. FILO: Yes, Your Honor. At this time, the People would offer the interview of Arleth at the Child Interview Center, which occurred on or about January 17th, 2012. I have a transcript to pass out to the jurors, and I'll cue up the video.

(Whereupon, People Exhibits 8 and 8-A were marked for identification.)

MR. MADDEN: Yes, Your Honor.

THE COURT: Thank you.

THE COURT: The record will reflect that we just completed playing the interview, which has been marked as People's 8. I will ask all members of the jury, if you'd please pass your transcripts to your right and Ms. Filo will pick them up. And after you pass them, we're going to take

1 our afternoon recess.

2 I'll order all members of the jury to report to the
3 jury assembly room on the second floor, and we'll make every
4 effort to call you back up at 3:30. And at 3:30, we'll
5 listen to Wendy's audio and visual interview at that time.
6 So we'll be in recess at this time. Thank you.

7 (Whereupon, a brief recess was taken.)

8 THE COURT: We'll go on the record. Record will
9 reflect all members of the jury are present, both counsel are
10 present, Mr. Chandler is present.

11 Ms. Filo, ready to proceed?

12 MS. FILO: Thank you, Your Honor. The People call
13 Kristin Cardosa.

14 KRISTIN CARDOSA,

15 Being called as a witness on behalf of the People,
16 having been first duly sworn, was examined and testified as
17 follows:.

18 THE CLERK: For the record, ma'am, police state and
19 spell your first and last name.

20 THE WITNESS: My name is Kristin Cardosa;
21 K-r-i-s-t-i-n, C-a-r-d-o-s-a.

22 THE COURT: Thank you, ma'am.

23 Direct examination, Ms. Filo.

24 MS. FILO: Thank you, Your Honor.

25 DIRECT EXAMINATION

26 BY MS. FILO:

27 Q. Ms. Cardosa, how are you presently employed?

28 A. I currently work for the Santa Clara County DA's Crime

1 Laboratory.

2 Q. What does the crime laboratory do? What's its primary
3 function?

4 A. We process evidence for different types of things
5 that --

6 Q. All kinds of things; right?

7 A. Yes. There is different departments that we have.

8 Q. So toxicology, ballistics, biological samples, computer
9 forensics, all kinds of things?

10 A. Correct.

11 Q. In what capacity do you currently work for the lab?

12 A. I work in the forensic biology unit.

13 Q. What does that mean?

14 A. It means we screen evidence for any kind of biological
15 material, such as blood, semen, saliva, skin cells, and then
16 we test it for DNA analysis.

17 Q. Okay. Ms. Cardoso, could you tell me a little bit about
18 your education?

19 A. Yes. I have a Bachelor of Science degree from Santa
20 Clara University in biology.

21 Q. What specific training do you have then to work at the
22 laboratory?

23 A. Once you get to the laboratory, we do extensive in-house
24 training in all of the different areas that you will be doing
25 casework in. It's approximately a year to a year and a half
26 of in-house training before you start casework.

27 Q. What does that training include in order to work in the
28 biological sample department?

1 A. It includes testing all kinds of different samples that
2 you may come across from casework. Anything from blood,
3 semen, saliva, et cetera. You get very familiar with the
4 types of samples that you will be seeing.

5 Q. Do you work with another more senior analyst who can
6 check your work?

7 A. Yes. There are other analysts that are currently doing
8 casework that will supervise your training.

9 Q. Is there a testing process that you go through in order
10 to sort of establish yourself as having reached the
11 acceptable threshold of testing?

12 A. Yes. We take a competency test created in-house at the
13 end of your training to prove you are competent in the
14 material that you have learned, and then every six months we
15 take an external test to make sure that we are proficient in
16 what we are doing.

17 Q. Every six months you take a proficiency test that is not
18 generated by your job. It's actually an external test?

19 A. That's correct.

20 Q. You passed all of your tests?

21 A. Yes, I have.

22 Q. How long have you been employed by the lab?

23 A. I have been at the lab for about seven years.

24 Q. How long have you been in the biological samples
25 department?

26 A. About six years.

27 Q. Ms. Cardoso, have you previously testified in this
28 county on the identification of biological samples?

1 A. Yes, I have.

2 Q. And the testing process you use to establish that
3 identification?

4 A. Yes.

5 Q. Approximately how many times?

6 A. Approximately ten times.

7 MS. FILO: Your Honor, at this time, the People
8 would offer Ms. Cardoso as an expert in the area of detection
9 and identification of biological sample.

10 MR. MADDEN: I have no voir dire, Your Honor.

11 THE COURT: Okay. Then she'll be recognized as an
12 expert in the areas requested.

13 BY MS. FILO:

14 Q. Ms. Cardoso, could you tell me in general how do items
15 come to the laboratory for testing? How do you get them?

16 A. The different agencies, the police agencies, request --
17 submit items for testing. They get delivered by either
18 officers or their property evidence technicians. They get
19 received by our laboratory by our property evidence
20 technicians, then they get stored at different temps, either
21 the freezer or room temp. And then we, as criminalists, will
22 go down and request our evidence from our property evidence
23 technician.

24 Q. So they sort of follow a chain of command -- I mean, a
25 chain of custody in order to get to you?

26 A. Yes, they do.

27 Q. Same thing, I guess.

28 And then you perform whatever analysis is requested

1 of you; is that correct?

2 A. That's correct.

3 Q. Ms. Cardoso, were you assigned to collect and identify
4 biological samples, if possible, from two chairs, blue
5 chairs -- seats that were associated with San Jose Police
6 Department case number 12-009-0244?

7 A. Yes.

8 Q. Once the items come into the laboratory, do they then
9 get a separate laboratory number?

10 A. Yes. We bar code all of our evidence that comes in, so
11 they get a separate lab bar code. They are identified within
12 our computer system.

13 Q. Originally, they come in with the police department
14 number. But once they are with you, they really have a lab
15 number?

16 A. They have a lab bar code, but a lot of times we use the
17 item numbers that the police give them.

18 Q. Like the evidence item number?

19 A. Correct.

20 Q. Okay. So, Ms. Cardoso, could you tell me how you would
21 go about determining whether or not there was a biological
22 sample present on one of the blue chairs that was submitted
23 to you for analysis? How do you do that?

24 A. So, in this case, if you are looking for semen, first we
25 would take an alternate light source that will allow any kind
26 of biological materials to fluoresce when you use certain
27 kinds of goggles and you are looking at the different
28 wavelengths. So then -- you then look for fluorescent stains

1 and then we test the fluorescent stains with the chemical
2 test, which could be presumptively positive for semen, and
3 then you move on if you find presumptively positive stains.

4 Q. Is that what you did in this case?

5 A. Yes.

6 Q. So the ALS device, what does it look like? It's like a
7 light; right?

8 A. Yes. Ours looks like -- kind of like a flashlight.
9 They have a different bulb at the end. It's not a normal
10 white light; it's a blue light.

11 Q. You run that over the item that you are looking for to
12 see what fluoresces?

13 A. Yes, that's correct.

14 Q. Then you could use a chemical test to determine whether
15 that's presumptively positive for semen?

16 A. Yes. These chemical tests, they are not confirmatory
17 tests because they do react to some other different fluids
18 that occur in nature. Some kinds of, you know, fruit juices
19 or other things may test positive, so it's only the next step
20 in the process of finding different stains.

21 Q. It just sort of gives you an idea what to test; right?
22 Where to look?

23 A. It gives us an idea where to take it further as to DNA
24 possibilities.

25 Q. Okay. Ms. Cardoso, did you draft a report relating to
26 the testing of the two chairs that were submitted to you?

27 A. Yes, I did.

28 Q. That is a 64-page report; is that right?

1 A. Yes. The report is three pages. The notes are
2 included, yes.

3 Q. Right. So you actually draft a typed report; right?

4 A. Yes.

5 Q. But then attached to that are your kind of handwritten
6 notes as you are doing the process, photographs,
7 chromatograph sort of depictions?

8 A. Yes. All of our notes from the screening process
9 identify what the chairs look like and what we're finding,
10 including then we add our DNA notes, which can include graphs
11 and other things.

12 Q. Okay.

13 MS. FILO: Your Honor, at this time, I would like
14 to have a 64-page Santa Clara County Crime Laboratory report
15 reflecting laboratory number M120168 marked as the People's
16 next in order.

17 THE COURT: Number 9.

18 (Whereupon, People's Exhibit 9 was marked for
19 identification.)

20 BY MS. FILO:

21 Q. You have a copy of this report with you, Ms. Cardoso?

22 A. I do.

23 Q. Okay. I will leave this one here in evidence and I'll
24 use my other copy. So you said that you first used the
25 alternate light source and then you have a presumptive test;
26 correct?

27 A. Correct.

28 Q. Did you do that in this case?

1 A. Yes, I did.

2 Q. So I would like to ask you specifically about SYO-02.
3 Each of the chairs was given a separate identification;
4 correct?

5 A. Correct.

6 Q. One of them is SYO-01; the other SYO-02?

7 A. Correct.

8 Q. On SYO-02, could you tell me how many areas fluoresced?

9 A. Um, I don't know if I counted the exact number.

10 Q. Okay.

11 A. There were many areas throughout the chair that
12 fluoresced that I marked with a Sharpie pen.

13 Q. Okay. So maybe I could just do this. I guess I'm going
14 backwards. Maybe I should -- Ms. Cardoso, could you tell me
15 that item, SYO-01, that's the photograph of the chair that
16 you examined?

17 A. Yes, that is.

18 MR. MADDEN: I'm sorry. I thought we were talking
19 about SYO-02.

20 MS. FILO: I said I think it's best we go in order
21 to SYO-01 or SYO-02.

22 THE COURT: Ms. Filo, would you like the lights to
23 see?

24 MS. FILO: Sure.

25 THE COURT: Okay.

26 BY MS. FILO:

27 Q. That is SYO-01?

28 A. Yes.

1 Q. That particular chair has a tag on the back of; is that
2 correct?

3 A. Yes, that's correct.

4 Q. Okay. And then what did you find on SYO-01, if
5 anything, that was of interest to you?

6 A. Well, I found multiple fluorescent stains I circled with
7 a black pen. I tested all of the stains with our presumptive
8 chemical test, and I only found one area that actually tested
9 positive with our presumptive test for semen.

10 Q. Okay. So you said that you marked the areas that you
11 were going to test, or that you were going to look more
12 closely at in a black Sharpie pen?

13 A. Yes.

14 MS. FILO: So, Deputy, if we could dim those lights
15 again? We might actually be --

16 BY MS. FILO:

17 Q. So am I correct, it's right -- there are a number of
18 places where you actually circled in black pen?

19 A. Yes, there are.

20 Q. Okay. I think it may be --

21 A. You may have a close-up photo.

22 Q. Yep, right there. I don't know if it's clear on my
23 screen, of course, than it is up there. You could almost see
24 right there. On the left-hand side of the photograph, those
25 are black Sharpie pen marks; is that right?

26 A. Yes, but those tested negative.

27 Q. Okay. There is also three circles: one, two, three on
28 the bottom edge of this chair; is that correct?

1 A. That is correct.

2 Q. And one of them is sort of an oval shape, that I'm
3 circling right now, is immediately to the left of this white
4 tag; correct?

5 A. Correct.

6 Q. Did one of those three circled areas test presumptively
7 positive for semen?

8 A. Yes. The one that's right next to the white tag that
9 you were just --

10 Q. This sort of oval area that I'm circling right now?

11 A. Yes.

12 Q. Immediately to the left of that white tag?

13 A. Yes.

14 Q. Okay. So once that item tests presumptively positive,
15 then what do you do with it?

16 A. So then we will sample the stain and we will take it
17 through our DNA process. And while we do that, we also make
18 a slide from the part of that sample and we will look for
19 spermatozoa.

20 Q. Okay. So you say you take a sample, what does that
21 mean?

22 A. So in this case, because I couldn't cut the chair up, I
23 just took a swabbing of the actual stain.

24 Q. So like almost with a Q-tip or something?

25 A. Yes.

26 Q. Then you are able to put that on a glass slide?

27 A. Well -- so then we take the Q-tip, we put -- we take
28 that, we soak it in some water, and then we take part of the

1 water and we put it onto a slide.

2 Q. Then what do you see in the slide?

3 A. You could see cellular material, you could see debris,
4 we may see spermatozoa. It depends on what is in the sample.

5 Q. And what did you see in this case?

6 A. There were spermatozoa confirmed from the sample.

7 Q. Spermatozoa has distinct physical characteristics? I
8 mean, it's very clear what it looks like when you are looking
9 at this through that microscope onto the slide; right?

10 A. Yes.

11 Q. Okay. So how do you determine then whose sperm it is?

12 A. We continue with the DNA process and we get DNA results
13 and we do a comparison.

14 Q. Okay. You say you do the testing, what kind of testing?
15 What is it?

16 A. DNA involves us adding chemicals to our sample to break
17 open the cells, release the DNA, and then we make lots of
18 copies of the DNA. We run it through our instruments. It
19 types it for us.

20 Q. Okay. Do you have to have a known sample against which
21 to test what you are analyzing?

22 A. Yes. If we get reference samples from individuals, we
23 will then run them separately and we will compare profiles to
24 see if we could compare them and see if we could identify the
25 foreign samples.

26 Q. In this case, were you provided with a cup that was
27 identified as something that had been used by Craig Chandler?

28 A. Yes.

1 Q. From that, you're able to identify or separate out a
2 reference sample of DNA?

3 A. Yes. We got a secondary reference from Mr. Chandler.

4 Q. So once you have that, you have your sample from what
5 you are trying to analyze, you could actually just feed it
6 into a computer and it will match the two; right?

7 A. No. We do the matching by hand.

8 Q. I'm sorry. Identifies what you have; is that right?

9 A. Yes, that's correct.

10 Q. Then by hand you match those up to each other?

11 A. Yes.

12 Q. And DNA has certain loci; right? Different alleles that
13 you could figure out whether or not they match up?

14 A. That's correct.

15 Q. And do you have a standard or a threshold for matching?
16 Like, how much of it has to match in order for you to say
17 it's that guy?

18 A. Yes, we do.

19 Q. What is your threshold?

20 A. We have a source threshold of as long as -- the
21 statistic that we do, as long as it's one in three hundred
22 billion or over, then we could call them a source of the
23 profile.

24 Q. Say it one more time. One in --

25 A. One in three hundred billion.

26 Q. Billion with a B?

27 A. With a B.

28 Q. All right. So once you reach that threshold, you are

1 all confident saying this DNA came from that person?

2 A. Yes, it's a 99 percent confidence in our rule; that once
3 it's over one in three hundred billion, that we are confident
4 saying that that is that person.

5 Q. Okay. And in this case, were you able to conclusively
6 determine that that white stain just to the left of the white
7 sticker on SYO-01 was, in fact, the spermatozoa of Craig
8 Chandler?

9 A. Yes. We -- when we do the DNA, we separate into two
10 different fractions. So when we have spermatozoa present, we
11 try to separate out possible epithelial cell fraction from
12 the possible sperm cell fraction, because the sperm cells we
13 could do that because they are tougher and they are harder to
14 degrade. So he was the source of the DNA from the epithelial
15 fraction as well as the sperm cell fraction.

16 Q. Okay. Epithelial cells are anything; right? Any part
17 of your body that would contain DNA; is that correct?

18 A. Correct.

19 Q. So skin, saliva, anything that sheds DNA we consider an
20 epithelial cell?

21 A. That's correct.

22 Q. Okay. But a spermatozoa is distinct; it's something
23 unique?

24 A. It is. It's much more structured and we're able to
25 separate it, because when we add the first chemical to the
26 sample, the epithelial cells will break open and digest and
27 the sperm cells will stay intact until we add a much harsher
28 chemical to it. So we're able to separate the two out.

1 Q. You could separate them out and determine that they are
2 both epithelial cells and spermatozoa cells in the sample
3 that you took from this one area that we described in SYO-01;
4 correct?

5 A. Correct.

6 Q. What does it mean if you have a mixture of sources?

7 A. When we have a mixture DNA profile, you will see more
8 than two alleles at each locus, and then that shows that
9 there is at least two people contributing to a mixture.

10 Q. So every allele, every location that you are looking for
11 in the DNA, has two markers; right?

12 A. Every individual has two alleles, yes.

13 Q. Because one comes from your mother and one comes from
14 your father?

15 A. Correct.

16 Q. So you'll have, for instance, a 10 and a 12; right?

17 A. Correct.

18 Q. That one location you could say that's mom and dad;
19 right?

20 A. That's correct.

21 Q. So, for instance, if you had three alleles or three
22 markers at that one location, you would know by definition
23 that another party, a second party, was involved in creating
24 that mixture?

25 A. That is correct. Usually, we look at the profile as a
26 whole to see if there is a lot of spots with more than two
27 alleles. There are rare occasions where individuals can have
28 three alleles at one location. It's just a rare mutation,

1 but if you see only that at one spot and not anywhere else,
2 you may think it might be the mutation. But we look at a
3 profile as a whole, so if there is more DNA in one location
4 with multiple alleles, it's more likely a mixture.

5 Q. Ms. Cardoso, with the respect to the spot you located
6 and tested on SYO-01, did there appear to be any mixture of
7 DNA?

8 A. No.

9 Q. This was a single profile?

10 A. It was a single source profile.

11 Q. Okay. Did you test any other areas on SYO-01 for the
12 confirming presence of DNA?

13 A. No, I did not.

14 Q. Okay. So, Ms. Cardoso, I would like to ask you now
15 about SYO-02. That is a photograph of the chair that was
16 labeled as item SYO-02?

17 A. Correct.

18 Q. And did you do the -- did you go through the same
19 process with SYO-02?

20 A. Yes, I did.

21 Q. So you used the ALS device?

22 A. Yes.

23 Q. To see if you have areas that fluoresced?

24 A. Correct.

25 Q. Did you have multiple areas of fluorescence?

26 A. Yes, I did.

27 Q. How many locations did you test for the presumptive
28 presence of semen?

- 1 A. Um, I tested five that tested positive for the -- with
2 the presumptive test for semen.
- 3 Q. Okay. And again, did you circle those five areas with a
4 black marker?
- 5 A. Yes, I did.
- 6 Q. All right. So again, it's a little hard to see on the
7 screen, but in that photograph, on this -- on the black metal
8 portion of the chair, there is one black circle marker;
9 right?
- 10 A. That's correct.
- 11 Q. And then on the left-hand side, just to the -- on the
12 edge of this photograph, there is another black circle; is
13 that correct?
- 14 A. That's correct, but that one did not test positive.
- 15 Q. Okay. And the one on the metal part of the chair did?
- 16 A. Yes.
- 17 Q. Okay. And then on the underside of the chair there
18 appear to be two circles to the left of the black metal bar.
19 You see those two?
- 20 A. Yes.
- 21 Q. And were those tested and did they return a presumptive
22 positive result for semen?
- 23 A. I did not test those.
- 24 Q. Okay. On this following photograph there is a sort of a
25 horseshoe, black half circle, and then on the plastic part of
26 the chair on the bottom, almost the bottom half of that
27 circle, were those two areas tested?
- 28 A. Only the one on the hard plastic was tested.

1 Q. Okay. And did that return a presumptively positive
2 result for semen?

3 A. Yes, it did.

4 Q. So where were the other three stains that tested
5 presumptively positive?

6 A. There is a circle to the right of that one on the hard
7 plastic. That one tested presumptively positive. And then
8 there was one located on the back of the chair next to the
9 metal towards the bottom. So it's not in this photo, but if
10 you go down to the bottom of the chair, it was on the side of
11 the chair across from the metal.

12 Q. Okay.

13 A. Then there is one at the top of the chair. It's not in
14 that photo.

15 Q. Okay. Got it. So if we have any questions, we have the
16 actual chairs here; right?

17 A. Yes, you do.

18 Q. Okay. So, Ms. Cardoso --

19 MS. FILO: Who wants the pleasure of doing this?

20 Your Honor, at this time, I'm going to ask that the
21 chairs be taken out of their covering, I guess I should say.

22 THE COURT: Could I -- when you get a chance,
23 Officer Pierce, could you lift them so I could see what they
24 are in.

25 DET. PIERCE: They are wrapped in paper bags.

26 THE COURT: Okay. Inside the paper bag, is there
27 anything? Just the chair themselves?

28 MS. FILO: The chairs.

1 DET. PIERCE: I think it's just the chairs. I'm
2 not sure.

3 THE COURT: If you could just check. While he's
4 doing that, would counsel approach briefly.

5 (Whereupon, there was a discussion at the bench.)

6 DET. PIERCE: There is nothing else inside. They
7 are just sitting inside the bag.

8 THE COURT: Okay. Thank you, Officer Pierce, for
9 opening the bags. I was just consulting with counsel of some
10 concerns I had. And as I understand it, there is absolutely
11 no issues we should be concerned with other than if anyone
12 handles them, they should handle them with gloves; correct?

13 THE WITNESS: Correct.

14 THE COURT: Am I correct, Ms. Filo, you are going
15 to be asking them to be marked?

16 MS. FILO: Yes.

17 THE COURT: If you will let us know which one you
18 want next in order.

19 MS. FILO: Sure. Let me try to do them in order,
20 Judge. SYO-01 will have the tag in the front.

21 DET. PIERCE: I think this is 2.

22 THE COURT: This is off the record.

23 (Whereupon, there was a discussion off the record.)

24 THE COURT: We'll go back on the record. As I
25 understand it, the People are asking that a chair that has
26 a -- it's been referred to as SYO-01 be marked next in order,
27 which will be People's 10.

28 MS. FILO: Okay.

1 (Whereupon, People's Exhibit 10 was marked for
2 identification.)

3 MS. FILO: Your Honor, I think we've got it figured
4 out. SYO-01 has the tag, so that will be -- I'm going to put
5 it on the cushion seat, or the back of the chair. We know
6 there was no sample there.

7 THE COURT: Okay. Thank you.

8 MS. FILO: Then People's 11 will be SYO-02.

9 THE COURT: Yes.

10 (Whereupon, People's Exhibit 11 was marked for
11 identification.)

12 THE COURT: That is also a small blue chair.

13 MS. FILO: Okay.

14 BY MR. FILO:

15 Q. So, Ms. Cardoso, can I ask you to step down off the
16 witness stand, with the Court's permission. And there's a
17 pointer right there, right behind you?

18 A. Here?

19 Q. There is a wooden pointer right by your right hip.

20 A. Oh, got it.

21 Q. Do you need your material or --

22 A. Yeah, I will.

23 MR. MADDEN: Your Honor, is it okay if I move?

24 THE COURT: Yes. Thank you.

25 BY MS. FILO:

26 Q. I'm going to ask maybe Det. Pierce to hold the chairs up
27 so we could figure out which is -- where everything is.

28 SYO-02. So, Ms. Cardoso, could you just identify

1 where -- for the jury where the five stains were located that
2 tested presumptively positive for semen?

3 A. Sure. You want to flip it. This side -- this side
4 right here. So these two areas right here.

5 MR. MADDEN: I'm sorry. We're all trying to see.

6 THE WITNESS: These two areas right here tested
7 presumptively positive.

8 THE COURT: Ms. Filo, I will ask you --

9 MS. FILO: Yes. For the record, Your Honor, that
10 appears to be the plastic side of the chair. If you were
11 sitting in it, it would be the -- by the subject's left
12 thigh.

13 THE COURT: Thank you.

14 THE WITNESS: Then it's on this side, so it's right
15 here and right here.

16 BY MS. FILO:

17 Q. Okay. That is the -- also, if the subject were sitting
18 in it, the left back side of the chair -- actually, the
19 underside one where the metal -- on the top of the metal
20 curvature?

21 A. Top of the metal curb and at the bottom before it curves
22 on the seat on the plastic.

23 Q. On the plastic?

24 A. One on the very top of the seat.

25 Q. Then the last one is at the very top on the underside
26 back of the rim -- plastic rim of the chair; is that correct?

27 A. That's correct.

28 Q. So all of them on the -- what would be the left-hand

1 side of that chair?

2 A. That's correct.

3 Q. Okay. And SYO-01, I think we had a pretty decent --

4 A. It's on the bottom side of this. So this whole circled
5 area, you could see there is almost kind of like a whitish
6 stain in the middle of it. That tested positive.

7 MS. FILO: Your Honor, for the record, that's on
8 the underside of the chair where the -- where the legs would
9 be, or the base of the chair will be.

10 THE COURT: Thank you.

11 MS. FILO: Okay. Thank you.

12 BY MS. FILO:

13 Q. Ms. Cardoso, the spots that you saw on SYO-02, you said
14 that you did a confirming test on how many of those spots?

15 A. Just one.

16 Q. Why not do the other four?

17 A. Well, I took that one through DNA and we do the
18 confirmatory test during that process. And since I found
19 semen and we got a DNA profile, we didn't move any further to
20 the others.

21 Q. Okay. So once you determined who it belongs to, I mean,
22 that's the DNA process; right?

23 A. Correct.

24 Q. But the presumptive process is where you could determine
25 whether or not it is semen?

26 A. Yes. The presumptive gives us -- it's presumptively
27 positive. I can do just a confirmatory test to look for
28 spermatozoa on the stain, not go to the DNA process, but we

1 just try to do things efficiently. If we need to go back, we
2 will go back.

3 Q. Okay. As part of what you are doing, just physically
4 observing, just looking at it; right?

5 A. Yes.

6 Q. And if it's sort of in the same general location, if it
7 looks similar, if it has the same properties just visually,
8 is that some information for you about whether or not this is
9 something really different that you need to be testing?

10 A. Yes. Sometimes if they are in different locations or
11 they look differently, yes, we might test multiple different
12 areas. But if they are all in the same area, we might test
13 one and see if we need to go back and test another later.

14 Q. The process of DNA testing is rather long and
15 time-consuming and expensive. Yes?

16 A. Yes.

17 Q. And I think I already asked this, but the DNA testing
18 that you did with respect to SYO-02, it was determined by the
19 same procedure to be the semen and spermatozoa of Craig
20 Chandler; is that correct?

21 A. That's correct.

22 MS. FILO: That's all I have, Your Honor.

23 THE COURT: Okay. Thank you. Would counsel
24 approach?

25 (Whereupon, there was a discussion at the bench.)

26 THE COURT: Based on my conversations with counsel
27 at sidebar, at Mr. Madden's request, we're going to recess at
28 this time until tomorrow morning at 9:00 o'clock. I'm

1 advised -- and, Ms. Cardoso, you could be here tomorrow at 9
2 as well?

3 THE WITNESS: Yes, I can.

4 THE COURT: Thank you for your cooperation. I will
5 order all members of the jury to report to the jury assembly
6 room on the second floor at 1:30 -- excuse me -- at 9:00 a.m.
7 I notice none of you quickly said: Do you mean 9:00 o'clock?
8 I'll make it clear, tomorrow morning at 9:00 a.m. jury
9 assembly room on the second floor. And at the end of the day
10 tomorrow, it's my intent to give you a status and update on
11 where the case stands. Okay?

12 So thank you very much for your patience during
13 this process. See you tomorrow morning at 9:00 o'clock.

14 (Whereupon, the jurors exited the courtroom and the
15 proceedings were had outside the presence of the jury.)

16 THE COURT: The jury has left the courtroom. Both
17 counsel and Mr. Chandler are present in the courtroom. It's
18 my understanding, Ms. Filo, you anticipate that you may
19 finish tomorrow morning.

20 Based on that possibility, Mr. Madden, as I
21 mentioned at sidebar, I appreciate you're going to be calling
22 some students tomorrow, and I will ask you to have at least
23 ten of them here tomorrow morning, at 1:30 have at least five
24 of the students, and then between 2:30 and 3:00 have an
25 additional five. I appreciate you are going to make every
26 effort, if you can, because as I understand it, you have
27 scheduled just the students tomorrow afternoon; correct?

28 MR. MADDEN: Yes.

1 THE COURT: Okay. And based on the representations
2 of why they are being called, that is the reason I'm making
3 that order.

4 Ms. Filo, do you wish to put anything on the
5 record?

6 MS. FILO: So the only thing I'm concerned about,
7 Your Honor, I understand that the children are going to be
8 called and Mr. Madden wants to ask what was put in their
9 mouth. I believe that that's the subject of the inquiry, but
10 I just want to make sure that any sort of corresponding
11 instruction or description or what have you by Mr. Chandler,
12 I mean, again, would be eliciting hearsay. So I just want to
13 make sure that we're talking about what actually happened as
14 opposed to what Mr. Chandler editorialized around that.

15 THE COURT: I think your comments are correct. I'm
16 sure Mr. Madden is aware of that and I'm confident things
17 will go smoothly tomorrow afternoon. I will order both
18 lawyers and Mr Chandler here tomorrow morning at 9:00 a.m.
19 and we'll continue with the trial.

20 (Whereupon, the Court took the evening recess.)
21
22
23
24
25
26
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28

1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)

4 I, JAMIE L. MIXCO, HEREBY CERTIFY THAT:

5 The foregoing is a full, true, and correct
6 transcript of the testimony given and proceedings had in the
7 above-entitled action taken on the above-entitled date; that
8 it is a full, true, and correct transcript of the evidence
9 offered and received, acts and statements of the Court, also
10 all objections of counsel, and all matters to which the same
11 relate; that I reported the same in stenotype to the best of
12 my ability, being the duly appointed and official
13 stenographic reporter of said Court, and thereafter had the
14 same transcribed into typewriting as herein appears.

15 I further certify that I have complied with CCP
16 237(a)(2) in that all personal juror identifying information
17 has been redacted if applicable.

19 Dated:

22 _____
23 Jamie L. Mixco, C.S.R.
Certificate No. 12708

24 ATTENTION:
25 CALIFORNIA GOVERNMENT CODE
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PERSON."

EXHIBIT 3

(Vol. 13)

TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

---o0o---

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

Plaintiff - Respondent,)

v.)

No. C1223754

CRAIG RICHARD CHANDLER,)

Defendant - Appellant.)

COPY

VOLUME 13

PAGES 1166 - 1301

JULY 23, 2013

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REPORTER'S TRANSCRIPT ON APPEAL
FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY

---o0o---

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: OFFICE OF THE ATTORNEY GENERAL
BY: KAMALA D. HARRIS,
Attorney General of the State
of California

FOR DEFENDANT-APPELLANT: In Propria Persona

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 2 IN AND FOR THE COUNTY OF SANTA CLARA
 3 BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY
 4 DEPARTMENT NO. 37

5 ---o0o---

6
 7 THE PEOPLE OF THE
 8 STATE OF CALIFORNIA,)
 9 PLAINTIFF,)
 10 v.)
 11 CRAIG RICHARD CHANDLER,)
 12 DEFENDANT.)
 13 _____ /

CASE NO. C1223754

14
 15 ---o0o---

16
 17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18 JULY 23, 2013

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 20 ---o0o---

21
 22
 23 APPEARANCES:

24 FOR THE PEOPLE: ALISON FILO
 25 Deputy District Attorney

26 FOR THE DEFENDANT: BRIAN MADDEN
 27 Attorney at Law

28 OFFICIAL COURT REPORTER: JAMIE L. MIXCO
 C.S.R. No. 12708

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1 San Jose, California

July 23, 2013

2 PROCEEDINGS

3 THE COURT: Thank you, ladies and gentlemen. The
4 record will reflect all members of the jury are present, both
5 counsel are present, Mr. Chandler is present, and our witness
6 is on the witness stand.

7 Mr. Madden, you were about to begin cross.

8 MR. MADDEN: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. MADDEN:

11 Q. Good morning, Ms. Cardoso.

12 A. Good morning.

13 Q. Thank you for coming back this morning.

14 You testified before, so I'm not going to go
15 through a lengthy discussion of your duties and obligations.
16 You know what they are. The only thing I would ask you is
17 that should I ask a question that doesn't make any sense to
18 you, I'm very capable of that, let me know and I'll change it
19 so we're having accurate communication. Okay?

20 A. (Shakes head up and down.)

21 Q. All right. Now, the first thing I would like you to do
22 is to -- I would like to impose on you to step down from the
23 witness stand. I want to ask you some questions about the
24 orientation of the two stains on which you found DNA, Mr.
25 Chandler's DNA; correct?

26 A. Correct.

27 Q. All right. So if you could do that, I think -- I think
28 Det. Pierce volunteered to put on the rubber gloves and help

1 with this. He'll take care of that. The implement for you
2 is a pointer. Thank you.

3 Now, if I could impose -- when you are ready, Det.
4 Pierce. No rush.

5 If I could impose on you to flip People's 11, which
6 I believe is SYO-02; is that correct?

7 A. Yes.

8 Q. If you could flip that to the same position that
9 People's 10 is, which is SYO-01. Okay. All right.

10 So just a couple of quick questions. For practical
11 purposes, these chairs appear to be identical to each other
12 or very similar; correct?

13 A. Correct.

14 Q. All right. They are both blue, they are both -- there
15 is a -- what appears to be a thick plastic base on which is
16 resting a fabric seat and a fabric back; correct?

17 A. Correct.

18 Q. And we know that the larger piece of fabric in each
19 chair is the seat; correct?

20 A. Correct.

21 Q. Why we know that? I know it's an easy one.

22 A. Because that's the seat of the chair.

23 Q. The small piece is obviously to support a back; right?

24 A. Oh, correct. Yes.

25 Q. And the slots in here are obviously ventilation for your
26 back; correct?

27 A. Correct.

28 Q. All right. Now, did you find -- on the fabric of either

1 SYO-01 or SYO-02, did you find any stains that contained
2 semen?

3 A. I only tested the presumptive test SYO-01, the actual
4 fabric. I didn't test the fabric from SYO-02.

5 Q. You did no testing on the fabric of SYO-02?

6 A. Not with the presumptive test.

7 Q. And that would assume -- since you didn't do any
8 presumptive testing, you didn't do any DNA extraction either?

9 A. No. Not from the fabric, no.

10 (Whereupon, the reporter interrupted proceedings.)

11 BY MR. MADDEN:

12 Q. I have to remember to breathe sometimes.

13 On SYO-01, you did presumptive testing on the
14 fabric; correct?

15 A. Correct.

16 Q. And did your presumptive testing of the fabric on SYO-01
17 fluoresce?

18 A. Yes. All of the areas that are circled in black
19 fluoresced with the ALS. But then when I went to test them
20 with the presumptive test, the presumptive test was negative.

21 Q. All right. So then would you be comfortable stating
22 that there is no evidence of any semen stain on either chair
23 SYO-01 or SYO-02, at least to the fabric part of the chair?

24 A. I did not test the fabric part of that chair.

25 Q. As a scientist, you can't give an opinion to that;
26 correct?

27 A. That's correct, but this one there is no semen on that.

28 Q. Okay. All right.

1 Now, there were two stains that you not only did
2 the alternative light source fluorescence; correct?

3 A. Correct.

4 Q. But then you did a presumptive test; correct?

5 A. Correct.

6 Q. Then you did a DNA extraction; correct?

7 A. Correct.

8 Q. All right. And on two of the stains, one on each chair,
9 you concluded that the DNA was Mr. Chandler's; correct?

10 A. Yes.

11 Q. And it was semen?

12 A. Yes.

13 Q. Okay.

14 Can I impose on Det. Pierce to first turn your
15 attention, Detective, to SYO-01, and if you, Ms. Cardoso,
16 could aid him and explain where the stain on SYO-01 is that
17 contains the semen of Mr. Chandler?

18 A. Yes. It's on the underside of the seat.

19 Q. Okay. So you flipped it over and I see what has been
20 previously referred to as a tag; right?

21 A. Yes.

22 Q. You testified about that in your testimony?

23 A. Yes. Right next to the left of the tag there is a stain
24 that was tested positive for semen, and it came back to Mr.
25 Chandler.

26 Q. Could you point that for me?

27 A. Right here.

28 Q. That would be contained within what appears to be a

1 black marker?

2 A. That's --

3 Q. Sharpie or something?

4 A. That's correct. I circled that.

5 Q. All right. And the stain that contained the semen,
6 could you point out which stain within that Sharpie you are
7 referring to?

8 A. So this was one continuous stain.

9 Q. Okay.

10 A. And the sections that are missing are where I tested.

11 Q. Okay. So the length of the entire stain before you
12 tested it would have been approximately how big in inches? I
13 know you're a scientist and you don't like inches, but I'm
14 not a scientist.

15 A. It's a stain that goes in kind of a loop, so backs over
16 on itself.

17 Q. Notwithstanding the fact that it's not a straight line,
18 could you give me an approximation of the width and the
19 length of it and inches?

20 A. It's a very thin stain. It's probably less than a
21 quarter of an inch.

22 Q. Across?

23 A. Across.

24 Q. And width?

25 A. And it's -- in length, it's probably four inches, five
26 inches, maybe.

27 Q. Okay.

28 A. If I had to guess.

1 Q. All right. And then may I impose on Det. Pierce to do
2 the same thing with respect to SYO-02.

3 And could you direct --

4 A. Sure. It's on the left side of the bottom seat.

5 Q. The left side of SYO-02. Is it on the plastic then?

6 A. It is on the plastic. It is on the side of the plastic
7 right here.

8 Q. Okay. And that would be in the area on this chair on
9 the left side of the plastic just below the seat about
10 approximately midway --

11 A. I would say probably, yeah, halfway.

12 Q. Okay. All right.

13 And can I ask you to give me an estimation of the
14 size of that stain in inches? I will take an
15 approximation --

16 A. I would say --

17 Q. -- in terms of the width and length?

18 A. I would say about the size of a nickel.

19 Q. About the size of a nickel. Okay. All right. Thank
20 you. You may sit down. I will take that for you, if you
21 like. I don't think we need it.

22 Let me get to questions that are a little more
23 scientific.

24 A. Okay.

25 Q. Just a little more. You did not test for saliva, did
26 you?

27 A. I did not.

28 Q. Okay. Now, typically saliva contains a lot of what you

1 call epithelial cells; correct?

2 A. That's correct.

3 Q. And when you were looking for spermatozoa
4 microscopically, you also looked for epithelial cells, didn't
5 you?

6 A. Yes.

7 Q. And according to your notes -- I believe this is on
8 Bates-stamped page 011. Are you with me?

9 A. One moment. Yes.

10 Q. So according to your notes, you found no epithelial
11 cells at all, did you?

12 A. I did not see any intact epithelial cells. No.

13 Q. And to be specific, no epithelial cells at all in either
14 the stain you just talked about and identified on SYO-01 and
15 SYO-02 --

16 A. That's correct.

17 Q. -- correct? All right.

18 So your results proved that only one body fluid
19 semen is present in both of these stains; correct?

20 A. Correct.

21 Q. That is what the evidence supports?

22 A. Yes.

23 Q. All right. So first you detected one semen stain on
24 SYO-01; correct?

25 A. Yes.

26 Q. And on chair 2, we're referring to SYO-02; correct?

27 A. Correct.

28 Q. All right. On chair 2, you indicated on direct that you

1 found five stains on the plastic that tested positive with
2 this presumptive test; correct?

3 A. Correct.

4 Q. But you only tested and confirmed the presence of semen
5 on one of those; correct?

6 A. That's correct.

7 Q. It is considered a presumptive test because other things
8 could cause a false positive? In fact, on direct you
9 testified that fruit juice could give a false positive;
10 correct?

11 A. There are certain things, yes, that can.

12 Q. So while you said that the other four stains looked
13 similar to the ones you tested, in fact, as a scientist,
14 you're not telling us those other stains were semen, are you?

15 A. I could not confirm they are semen.

16 Q. The only one that we know is semen on SYO-02 is the
17 stain that you tested?

18 A. That's correct.

19 Q. That's on the plastic left edge of the seat portion of
20 the chair?

21 A. Yes.

22 Q. So a fair summary of your analysis would be: As to
23 chair SYO-01, you found a small amount of semen on the
24 underside unmixed with any other body fluid or DNA; correct?

25 A. Correct.

26 Q. And as to chair SYO-02, you found the small amount of
27 semen on the left side unmixed with any other body fluid or
28 DNA; correct?

1 A. Correct.

2 Q. All right.

3 Finally, Ms. Cardoso, I would like to give you a
4 hypothetical question.

5 A. Okay.

6 Q. A man and a woman have sex in a room containing the two
7 chairs, SYO-01 and SYO-02. Immediately afterward, some semen
8 gets onto the hands of the man, and the man then moves both
9 of these chairs, transferring the semen on his hand to the
10 chairs.

11 Is that scenario a reasonable explanation for the
12 finding that you made here?

13 A. Based on the appearance of the stains, they don't appear
14 to be transfer stains. They appear to be directly deposited
15 onto the chairs.

16 Q. They don't appear to be transfer stains?

17 A. They don't.

18 Q. Why not?

19 A. They don't appear to be smeared or in any kind of way
20 disturbed. They appear to be just a pure liquid placed on
21 the chairs.

22 Q. Directly deposited from a position, then, below the
23 chairs?

24 A. Well, if the chairs were flipped over, maybe they were
25 deposited that way.

26 Q. That's really the only way that could happen; right?

27 A. Possibly, yes.

28 MR. MADDEN: I have no further questions.

1 THE COURT: Redirect?

2 MS. FILO: Yes. Thank you.

3 REDIRECT EXAMINATION

4 BY MS. FILO:

5 Q. Ms. Cardoso, you said that there was a small amount of
6 semen that you were able to locate; is that right?

7 A. Yes.

8 Q. Do you quantify concentration of semen -- of
9 spermatozoa?

10 A. Yes, we do.

11 Q. Okay. So, for instance, on page 11 of your report, you
12 have the indicator plus one for SYO-01, and then the
13 indicator plus two for SYO-02. What does that mean? Plus
14 one or plus two?

15 A. So we have guidelines in our manual of how we quantify
16 the amount of sperm that we see on the slides when we're
17 looking at them, and we try to gauge it to see how much we
18 have in our sample. Let me refer to my manual and I will
19 give you the exact definition.

20 Q. Sure.

21 A. So based on our manual, plus one indicated only a
22 minimum number of spermatozoa, approximately two to ten sperm
23 heads on the slide. Plus two would indicate spermatozoa in
24 some fields, which means you see a fair amount throughout the
25 scope of the slide that you are looking. And we also have
26 two others, if you would like me to explain?

27 Q. Sure.

28 A. Plus three indicates spermatozoa in most fields. So as

1 you are scanning the slide, you see sperm is in most of the
2 fields that you look at. And plus four indicates many
3 spermatozoa per field, which is a very highly concentrated
4 sample.

5 Q. You said that the stains themselves don't appear to be
6 transfer stains. What does that mean? What would you look
7 for if you are trying to distinguish between a transfer stain
8 and a directly deposited stain?

9 A. So transfer stains, if you could imagine if you had
10 some -- you know, something on your hand -- like, say you had
11 ketchup on your finger, you touched something, it might look
12 smeared or disturbed. It wouldn't look like a droplet if it
13 just hit -- you know, if you just had some ketchup hit a cup
14 or something like that. So it doesn't -- they don't appear
15 disturbed. They don't appear that they got, you know,
16 different concentrations along the edges. If they are, you
17 know, one solid stain, it doesn't appear that a hand has
18 moved it or touched or disturbed it.

19 Q. Okay. So, Ms. Cardoso, could I ask you again to step
20 down quickly, and I don't think I need to move the chairs.

21 So, Ms. Cardoso, on the left-hand side here of
22 SYO-02 --

23 A. Yes.

24 Q. -- what I'm seeing appears to be droplets. I mean,
25 that's what a lay person would call them; right?

26 A. That's what they appear to be, yes.

27 Q. Okay. Even droplets that seem to get heavier on the
28 bottom?

1 A. Yes. This one appears to get heavier as it moves down
2 the seat, which gravity would pull a droplet down. It would
3 dry out like that.

4 Q. Okay. So I think of a droplet as being, you know,
5 tear-shaped; right? That kind of --

6 A. That's correct. It depends on what surface it hits and
7 how -- if the surface is curved, it might not look exactly
8 like a tear shape.

9 Q. But it should be heavier at the bottom as it's traveling
10 down the surface; correct?

11 A. Correct.

12 Q. The majority of the stain that I see just from the naked
13 eye is on this left-hand side of the chair; is that right?

14 A. That's correct. However, I don't -- these other items
15 did not fluoresce, so I don't know -- I could not confirm
16 what they are.

17 Q. Okay. So it's just kind of this -- I mean, the one I
18 see, that's the biggest; right? This -- of the two markers,
19 it's the one closest to the seat of the chair?

20 A. That's correct. But this one is the one I sampled for
21 DNA, so most of it has been consumed. It's not on the chair
22 right now.

23 Q. Okay. There was also a stain on SYO-02, kind of on the
24 backside of the chair; is that right?

25 A. Yes, that's correct.

26 Q. Okay. Ms. Cardoso, just one last question. Is there
27 any way to date when the deposits were made?

28 A. No.

1 Q. There is no way scientifically to determine whether it
2 was made last week or last year?

3 A. No, there is no way.

4 Q. Okay.

5 THE COURT: Thank you.

6 Recross, Mr. Walsh -- I'm sorry -- Mr. Madden. I
7 don't know where Walsh came from.

8 MR. MADDEN: I was just thinking to myself where
9 that came from. I don't remember hearing that name in this
10 trial.

11 THE COURT: I have a meeting with Judge Walsh.

12 MR. MADDEN: Now I won't wonder about that the
13 whole morning. Thank you.

14 THE COURT: Welcome.

15 MR. MADDEN: One moment please, Your Honor.

16 THE COURT: Yes.

17 MR. MADDEN: I have no further questions, Your
18 Honor.

19 THE COURT: Okay. Any objection to this witness
20 being excused?

21 MS. FILO: No, Your Honor.

22 MR. MADDEN: No.

23 THE COURT: Thank you. You are excused and free to
24 leave.

25 THE WITNESS: Thank you.

26 MS. FILO: The People call Russ Chubon,
27 C-h-u-b-o-n.

28 ///

1 RUSSELL CHUBON,

2 Being called as a witness on behalf of the People,
3 having been first duly sworn, was examined and testified as
4 follows:

5 THE CLERK: For the record, sir, could you please
6 state your full name and spell both for the record.

7 THE WITNESS: Russell Chubon; R-u-s-s-e-l-l,
8 C-h-u-b-o-n.

9 THE COURT: Thank you.

10 Direct examination, Ms. Filo.

11 MS. FILO: Thank you.

12 DIRECT EXAMINATION

13 BY MS. FILO:

14 Q. Good morning. Mr. Chubon, you are presently employed as
15 an investigator for the Office of the District Attorney;
16 correct?

17 A. Correct.

18 Q. How long have you held that position?

19 A. Six months.

20 Q. Where were you employed prior to becoming an
21 investigator with the District Attorney's Office?

22 A. San Jose Police Department and Santa Clara County.

23 Q. How long were you employed by the San Jose Police
24 Department?

25 A. Twelve years.

26 Q. What was your last assignment within the San Jose Police
27 Department?

28 A. I was assigned to the child exploit detail, and that's

1 within the sexual assault unit.

2 Q. So you worked directly and were partners with Det.
3 Pierce?

4 A. I was.

5 Q. Detective, were you assigned to assist in the
6 investigation of the -- assist in the investigation of Craig
7 Chandler?

8 A. I was.

9 Q. Do you know when approximately you got that assignment?

10 A. The morning of January 10th.

11 Q. Were you assigned to be the finder of evidence?

12 A. I was.

13 Q. What does that mean?

14 A. Um, for documenting evidence collected, one
15 officer/detective is assigned to be the finder as the person
16 that collects and books the evidence.

17 Q. So you're responsible for documenting what you take,
18 from where you take it, identifying it, bar coding it,
19 getting it into evidence, things like that?

20 A. Correct.

21 Q. Handling it safely, that sort of thing?

22 A. Correct.

23 Q. Okay. In discharging that obligation in this case, did
24 you go to classroom 18 at O.B. Whaley School?

25 A. I did.

26 Q. Do you remember when the first time was you actually
27 went into the classroom?

28 A. It was noonish time. The kids were, I believe, on a

1 lunch break, so that gave me an opportunity to search the
2 room.

3 Q. Okay. Detective, I'm going to show you a diagram, which
4 I'm going to ask to be marked as People's next in order.

5 THE COURT: I believe that will be 12.

6 (Whereupon, People's Exhibit 12 was marked for
7 identification.)

8 MS. FILO: Your Honor, may I approach?

9 THE COURT: Yes. Thank you.

10 BY MS. FILO:

11 Q. Okay. So I hope -- Deputy, could I get you to dim the
12 lights just quickly to see if that helps us? It's awfully
13 light, but we'll do the best we can. Oh, there we go.

14 Detective, is that -- for all practical purposes,
15 is sort of a diagram of classroom 18?

16 A. It is.

17 Q. Okay. And, of course, I lost my little handy pointer.

18 So, Detective, up here where I'm pointing there is
19 a dotted line on the far right-hand side of the diagram. Is
20 that the door that would lead to the outside?

21 A. It is.

22 Q. Okay. Then along that same wall it says "computer table
23 and sink," is that where those items were located within the
24 room?

25 A. Yes.

26 Q. Along the bottom of the diagram is identified as the
27 white board; is that correct?

28 A. Yeah. There is storage cabinets there as well.

1 Q. Both sides there is almost like bookshelves; right?

2 A. Yes.

3 Q. Immediately in front of the white board there is almost
4 a backward C and upside down L. Are those student chairs?

5 A. Yes.

6 Q. Immediately to the left of that there is sort of a
7 horseshoe-shaped table; is that accurate?

8 A. Yes.

9 Q. Mr. Chandler's desk is identified in fact as his desk?

10 A. Yes.

11 Q. Then behind it there is a paper cabinet, a bookcase, a
12 short cabinet, and a tall cabinet; right?

13 A. Yes.

14 Q. And then immediate -- in between Mr. Chandler's desk and
15 the tall cabinet, there is a door that goes into another
16 classroom; is that right?

17 A. Yes.

18 Q. Okay. That's essentially the condition, although not to
19 scale, that you found the room on January 10th; is that
20 accurate?

21 A. Yes.

22 MS. FILO: Just for purposes of orientation, Your
23 Honor, I would like to have marked as People's next in order,
24 essentially, a satellite image of the school.

25 THE COURT: Okay. That will be People's 13.

26 (Whereupon, People's Exhibit 13 was marked for
27 identification.)

28 MS. FILO: May I approach, Your Honor?

1 THE COURT: Yes. Thank you.

2 BY MS. FILO:

3 Q. Det. Chubon, as I show you People's 13, also projected
4 up on the screen, so this area that I'm pointing to, kind of
5 right in the center of the satellite, that is O.B. Whaley
6 School; correct?

7 A. Yes.

8 Q. This sort of curved street that runs along the -- kind
9 of the eastern side of the school, this would be Alvin Ave.
10 Is that right?

11 A. Yes.

12 Q. And then along sort of the southwestern diagonal there
13 is another street; correct?

14 A. Yes.

15 Q. This area right in the sort of lower right-hand corner
16 of the school there is a playground; is that accurate?

17 A. Yes.

18 Q. And immediately adjacent to that there is a square
19 building with a large tree on the bottom right-hand corner;
20 is that accurate?

21 A. Correct.

22 Q. And this bottom right-hand corner of this square
23 building that I'm pointing to now, classroom 18, is that Mr.
24 Chandler's classroom?

25 A. It is.

26 Q. Okay. You were actually even out at the school this
27 weekend to sort of double check and confirm because it's been
28 a while; right?

1 A. Monday, yes.

2 Q. Okay. Det. Chubon, did you go out to the school by
3 yourself on January 10th, or did you have other people with
4 you?

5 A. There was other detectives.

6 Q. Okay. And did you attempt to document the room in
7 photographs?

8 A. I did.

9 Q. And we've had a series of photographs marked. I don't
10 think we need to go through all of them, but those are what's
11 been marked, I think, Defense A-1 through A-13 or so. Those
12 are the photographs you took; correct?

13 A. Yes.

14 Q. At the time that you took those photographs, did you
15 have any real information about what was or what was not
16 important in your investigation?

17 A. It was very limited.

18 Q. So at that point, all you could do is sort of get a
19 general glimpse of the classroom?

20 A. Correct.

21 Q. Didn't really know what you were looking for?

22 A. Correct.

23 Q. Okay. Detective, were you responsible for -- strike
24 that.

25 Did you have a team from the crime scene come out
26 to the classroom?

27 A. Later that late afternoon, yes.

28 Q. What do they do?

- 1 A. Um, they are trained on several specific techniques of
2 collecting evidence, and one of the tools they use is an
3 alternative light source to look for items of evidence that
4 when the room is dark would show up with, like, a
5 fluorescence, like blood and other items, on the property of
6 something.
- 7 Q. What does that alternative light source look like? What
8 is it?
- 9 A. There is different styles. Some can be as large as a
10 large flashlight; other ones are more about the size of a
11 thermos and basically like a flashlight, and then you put on
12 some special goggles so you could detect the items that may
13 be illuminated.
- 14 Q. Were you there when the crime scene was there with the
15 ALS device?
- 16 A. Yes.
- 17 Q. Did you have on the goggles?
- 18 A. Yes.
- 19 Q. Were there -- what areas of the classroom did the crime
20 scene attempt to fluoresce, for lack of a better word?
- 21 A. The main focus was the area near the desk, the floor
22 around it, the pathway towards the door, pathway towards the
23 sink, and then that U-shaped teaching table.
- 24 Q. Okay. So you went through those items with the ALS, or
25 the crime scene did; is that correct?
- 26 A. Yes.
- 27 Q. Were there areas that fluoresced?
- 28 A. There was -- not in those areas. In other areas there

1 was -- after extra, you know, search, but nothing in those
2 areas. No.

3 Q. Okay. When the search was done -- there is a chair
4 depicted at Mr. Chandler's desk in A-1, I think. Were the
5 chairs there or were they gone?

6 A. They had already been removed.

7 Q. Okay. Det. Chubon, who made a decision to remove those
8 chairs?

9 A. I did.

10 Q. Why did you think to take those chairs?

11 A. Um, it was a classroom. At least one of the victims had
12 described a chair being involved. So after collecting items
13 of evidence that I thought could be useful, I looked around
14 the classroom and there was only two chairs that matched a
15 description. And there was this chair and a second chair
16 that was in the U-shaped table, so I collected those.

17 Q. Okay. When you say "matched the description," match the
18 description of what?

19 A. Larger than a student's chair. And those were the only
20 two chairs in the classroom that were larger than a small
21 student's chair.

22 Q. Both of the chairs that you seized, did they have wheels
23 on them?

24 A. Yes.

25 Q. Did you dismantle the wheels, or where did the wheels
26 get removed from the seats?

27 A. They were the only two chairs in the classroom with
28 wheels. I dismantled them at the police department.

1 Q. You took them in total, in whole, and then you
2 dismantled the legs back at the department?

3 A. Correct.

4 Q. And then were the seats submitted or booked into
5 evidence?

6 A. Yes. I took the seats, packaged them, and then
7 submitted them into evidence.

8 Q. Okay. So, Det. Chubon, I want to look quickly again at
9 that diagram. So there is an X behind Mr. Chandler's desk;
10 right?

11 A. Yes.

12 Q. That's where one of the chairs with the wheels was
13 found?

14 A. Yes.

15 Q. And then there is an X on the inside of the horseshoe
16 table. Is that where the second chair was found?

17 A. Yes.

18 Q. Okay. Detective, while you were there, did -- were any
19 of the student's chairs specifically examined?

20 A. No.

21 Q. So you didn't go -- the crime scene didn't take the ALS
22 device and go over student chairs; is that right?

23 A. Correct.

24 Q. At that time in the investigation, did you have any
25 information at all that the student chairs had even been
26 involved in these episodes or incidents?

27 A. No.

28 Q. How were you able to determine which chair came from Mr.

- 1 Chandler's desk and which chair came from the horseshoe desk?
- 2 A. Having looked at these pictures and the photographs of
- 3 the crime lab, this chair does not have a large label tag on
- 4 it, and the other chair, although not seen in the picture --
- 5 there is two pictures that -- well, there is several pictures
- 6 the crime lab has, but one -- and one doesn't have a tag.
- 7 Q. Okay. So the chair that is currently placed at Mr.
- 8 Chandler -- I'm sorry -- that is placed at Mr. Chandler's
- 9 desk in Defense A-1 does not have a tag; is that correct?
- 10 A. Yes.
- 11 Q. And that is SYO-02, which is here in the courtroom;
- 12 correct? No tag?
- 13 A. Yes.
- 14 Q. Okay. The SYO-01 that does have the tag, this was the
- 15 chair that was seized from sort of that horseshoe table; is
- 16 that accurate?
- 17 A. Yes.
- 18 Q. Det. Chubon, could you estimate for me in distance --
- 19 the diagram we have is not to scale -- the distance between
- 20 Chandler's desk and that horseshoe table?
- 21 A. So from the desk to the small horseshoe table, maybe 15
- 22 feet.
- 23 Q. Were there stationary chairs around the outside of that
- 24 horseshoe table?
- 25 A. There was at least one.
- 26 Q. Okay. Again, Det. Chubon, at the time that you seized
- 27 these chairs, did you have any idea they would hold any
- 28 evidentiary value?

1 A. Um, small, simply to demonstrate that these are the
2 chairs that were in the classroom.

3 Q. Seized primarily as what we would refer to as
4 demonstrative evidence?

5 A. Correct.

6 Q. Det. Chubon, I would like to show you a photograph that
7 I think has been previously marked. It apparently has not
8 yet been marked as an exhibit.

9 MS. FILO: Your Honor, with the Court's permission,
10 I will identify it for the record and then present a hard
11 copy to the Court to be submitted as an exhibit.

12 THE COURT: Um, you're representing the
13 investigator could authenticate it?

14 MS. FILO: I am.

15 THE COURT: With that representation, then this
16 next photograph will subsequently be marked as People's 14.

17 MR. MADDEN: A photograph of what, Your Honor?

18 THE COURT: Of --

19 MS. FILO: Your Honor --

20 THE COURT: -- the classroom with someone standing
21 in it?

22 MS. FILO: Correct.

23 (Whereupon, People's Exhibit 14 was marked for
24 identification.)

25 MS. FILO: Your Honor, if I could get the deputy to
26 dim the lights quickly? Thank you.

27 BY MS. FILO:

28 Q. Det. Chubon, what's in that photograph appears to be Mr.

1 Chandler's desk with the sort of wheeled chair; is that
2 right?

3 A. Yes.

4 Q. And there is a man standing there?

5 A. Correct.

6 Q. Who is that?

7 A. That is Det. -- Sgt. Michael Warden.

8 Q. Why did you take that picture?

9 A. Again, I wanted to demonstrate the size of the chair to
10 an adult male.

11 Q. How tall is Det. Warden?

12 A. Six foot one.

13 Q. So you were trying to demonstrate where essentially the
14 back of the chair would line up with an approximately
15 six-foot-tall man?

16 A. Correct.

17 Q. Det. Chubon, in your entire search of that classroom,
18 did you find a blindfold?

19 A. No.

20 Q. You looked in cabinets; is that correct?

21 A. Yes.

22 Q. Closets?

23 A. Yes.

24 Q. You looked through drawers?

25 A. Yes.

26 Q. You looked through everything that you could think of to
27 look?

28 A. I did.

1 Q. There was no blindfold?

2 A. Correct.

3 MS. FILO: That's all I have, Your Honor.

4 THE COURT: Okay. Thank you.

5 Cross, Mr. Madden.

6 MR. MADDEN: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. MADDEN:

9 Q. Good morning, Mr. Chubon. My name is Brian Madden. I'm
10 Mr. Chandler's attorney.

11 A. Good morning.

12 Q. So let's start with you being a finder. So you were
13 designated as the finder in this case; correct?

14 A. Yes.

15 Q. Does that mean you personally handled all of the
16 evidence that was collected?

17 A. Yes.

18 Q. There may have been others that helped you, but you
19 touched it?

20 A. Correct.

21 Q. You cataloged it?

22 A. Yes.

23 Q. All right. How long were you in the classroom at O.B.
24 Whaley collecting evidence?

25 A. There was two visits to the classroom, so probably total
26 of an hour.

27 Q. Were both of these visits on January the 9th?

28 A. January 10th.

1 Q. I'm sorry. I apologize. I didn't mean to misstate your
2 testimony. January 10th?

3 A. Yes.

4 Q. And the first session would have been somewhere around
5 midday when the kids were apparently at lunch?

6 A. Correct.

7 Q. So the classroom was empty?

8 A. Yes.

9 Q. So you went back to the crime scene this last weekend;
10 is that correct?

11 A. Monday.

12 Q. I'm sorry. Monday of this week?

13 A. Yes.

14 Q. All right. Yesterday?

15 A. Yes.

16 Q. All right. You did that for the purpose of re-orienting
17 yourself with the classroom and the school grounds prior to
18 testifying?

19 A. The classroom was closed. I just went in to orientate
20 myself with the neighborhood and the playground.

21 Q. All right.

22 A. Related to this school.

23 Q. So yesterday, you did not go back into the classroom?

24 A. Correct.

25 Q. Okay. Det. Chubon, could you -- is it Chubon or Chubon?

26 A. Either.

27 Q. Which do you prefer?

28 A. Chubon.

1 Q. All right. Det. Chubon, you could see this diagram from
2 where you are?

3 A. Yes.

4 Q. If you can't, just let me know. You could walk up to
5 it. Okay?

6 So let's start from what you previously described
7 as a square building which contained classroom 18; correct?

8 A. Yes.

9 Q. And classroom 18 would have been in the lowest portion
10 of that building on this diagram; correct?

11 A. Correct.

12 Q. Do you know how many other classrooms were in that
13 building, that square building?

14 A. In that square building, four.

15 Q. Yes. All of the classrooms essentially would have
16 mirrored each other in terms of how they were constructed and
17 where the doors were?

18 A. I assume. I could only guess. I don't know.

19 Q. I don't want you to guess. You assume that's the case?

20 A. I know what the inside of the classroom 18 looks like,
21 so --

22 Q. Did you ever go into the classroom adjacent to room 18?

23 A. I did.

24 Q. All right. And how did you get into that classroom?

25 A. Through the interior door that connects the two rooms.

26 Q. Did you need a key to get into that?

27 A. No.

28 Q. Did that door have a lock?

1 A. I don't think it did.

2 Q. All right. So it was an internal door? There was no
3 lock whatsoever on it; correct?

4 A. Not that I remember, no.

5 Q. Okay. You don't have any reason to doubt that; right?

6 A. Correct.

7 Q. All right. Now, you described the curved-shape road as
8 on the east side of that diagram? More or less the east
9 side; correct?

10 A. Yes.

11 Q. And while we're on the subject of roads, if I were to
12 aline the pointer on the lower left-hand portion of the
13 diagram, this is actually Highway 101; correct?

14 A. Correct.

15 Q. All right. And then the main -- the closest exit from
16 101 to O.B. Whaley School is what exit?

17 A. Tully.

18 Q. Tully Road. Okay.

19 Now, if I -- if you just -- if I use the marker,
20 we're now going at the end of Alvin Rd., turning onto another
21 road. You don't know the name of this road?

22 A. Correct.

23 Q. All right. There appears to be an open space, and in
24 the area of room 18, either five or six trees; correct?

25 A. Yes.

26 Q. There also appears to be the same or similar tree at the
27 southern portion of the part that is O.B. Whaley School;
28 right?

1 A. Correct.

2 Q. There appears to be a playground adjacent to the
3 building that contains room 18?

4 A. Yes.

5 Q. There appears to be a much larger playground to the top
6 of the diagram; correct?

7 A. Correct.

8 Q. Then there appears to be grass fields, one of which
9 obviously contains a baseball diamond; correct?

10 A. Correct.

11 Q. Now, as we move from the baseball diamond on Alvin
12 Ave. -- I'm not 6'1" -- and we get to the area with a red
13 roof, do you know what part of O.B. Whaley School that was?

14 A. No.

15 Q. If we get to what appears to be a parking lot, adjacent
16 or right next to Alvin Ave. in the southern end of the O.B.
17 Whaley property, do you know what that is?

18 A. The parking lot is the staff parking lot.

19 Q. Correct. So this is where the teachers park; correct?

20 A. Correct.

21 Q. And then directly from the parking lot is a building,
22 appears to be square, a little larger, or perhaps it's
23 rectangular. Do you know what this building contains?

24 A. No.

25 Q. Have you ever been to the office at O.B. Whaley?

26 A. Yes.

27 Q. Is that consistent with your recollection of where the
28 office is in relation to this diagram?

1 A. Um, when I went yesterday, a few of the buildings had
2 been demolished.

3 Q. Huh? Okay.

4 A. So I'm not specific which specific classroom was the
5 administration classroom or the administration office.

6 Q. When you were doing your investigation, did you ever go
7 inside the office?

8 A. I did.

9 Q. And was it to your recollection that the office was --
10 this is the main driveway to the school; correct?

11 A. Correct.

12 Q. If you took the main driveway straight ahead and drove
13 your car, you'd crash into the office; right?

14 A. From memory, that is the general location of the office,
15 yes.

16 Q. All right. Thank you.

17 Now, when you were -- as the designated collector,
18 when it came to taking photographs, were you the person that
19 actually took the photographs?

20 A. I did.

21 Q. Okay. What was your goal when you were photographing
22 the interior of the classroom?

23 A. Try to capture the representation of what the classroom
24 looked like that could be presented, if needed, in the
25 future.

26 Q. So in one sense, it was cursory? In other words, you
27 weren't searching items? You were just trying to document
28 where the items were?

1 A. Correct.

2 Q. There were others who actually searched thoroughly
3 within cabinets or drawers or closets or whatever; correct?

4 A. No.

5 Q. Others didn't do that? You did that?

6 A. I did that.

7 Q. Okay. Did you photograph the interior of every closet?

8 A. No.

9 Q. Why not?

10 A. There was nothing of evidentiary value on the general
11 information I had to take a picture of.

12 Q. So it wasn't your goal when you took those photographs
13 to photograph every nook and cranny of that classroom?

14 A. Correct.

15 Q. You had a limited amount of information provided to you
16 by others in the San Jose Police Department; correct?

17 A. Correct.

18 Q. And based on that limited information, that is
19 information that was available to you on the afternoon of
20 January 10th, you started taking photographs of things that
21 you thought might be relevant; is that a correct statement?

22 A. Correct.

23 Q. Okay. But again, the photographs that you took were not
24 meant to be a thorough and complete survey and mapping of
25 every nook and cranny of that classroom?

26 A. Correct. Just general.

27 Q. Okay. Now, the two chairs that you took from the
28 classroom, did you have an opportunity before you testified

1 today to look at these two chairs?

2 A. No.

3 Q. Could you identify from where you are these two chairs,
4 or do you need to come down and look?

5 A. Okay.

6 Q. All right. Do those chairs appear to be the two chairs
7 that you took from O.B. Whaley?

8 A. They are.

9 Q. How do you know that?

10 A. Well, one has a tag and one doesn't. And based on the
11 fact that I collected two chairs, booked them into evidence,
12 they were transferred to the crime lab, subsequently released
13 and sent to court, it's my belief those are the same.

14 Q. Mine too. All right.

15 Now, these chairs appear to be essentially the same
16 chair in terms of blue with fabric, more or less the same
17 shape, if not identical shape; correct?

18 A. Correct.

19 Q. And you took these chairs off the base? I take it,
20 there were probably four screws?

21 A. There was some sort of screw or bolt on the bottom, yes.

22 Q. Okay. What did you do with those bases?

23 A. Um, left them in our sexual assault office.

24 Q. Okay. Have those bases ever been sent to the crime lab
25 for purposes of DNA analysis?

26 A. I don't know.

27 Q. Okay. Have you had a chance before you testified, Mr.
28 Chubon, to look at Defense Exhibit A-1 through 13?

1 A. Um, yes.

2 Q. Okay. And so these don't represent all of the
3 photographs that were taken by you; correct?

4 A. Correct.

5 Q. However, all that are depicted in these -- in this
6 series were taken by you; correct?

7 A. Yes.

8 Q. Okay. Now, do you remember seeing any exhibit that
9 either showed the U-shape table either in whole or in part?

10 A. I think there might have been two pictures that
11 partially show that table.

12 Q. All right. I think I have the one you are talking
13 about. I think I'm referring to A-13. Let's talk about that
14 one first. Okay?

15 A. Okay.

16 Q. Let me get my pointer.

17 So looking at Defense A-13, the enlarged white
18 board photograph, does this photograph depict -- where I'm
19 pointing, does that appear to be a portion of the U-shaped
20 table?

21 A. It does.

22 Q. Okay. And tell me why you believe that's the case.

23 A. Table is a U; that's half of the U.

24 Q. Okay. Now, there is a chair that I see in this
25 photograph; correct?

26 A. Correct.

27 Q. Does that appear to be any of the two chairs that you
28 took from the U-shaped table?

1 A. No.

2 Q. Does that appear to be a smaller chair?

3 A. Yes.

4 Q. Perhaps a student chair?

5 A. Perhaps.

6 Q. Similar to what appears to be student chairs at the
7 various desks you see in this photograph; correct?

8 A. Correct.

9 Q. All right. So the chair that you took from the U-shaped
10 table was taken from the inside of the table; is that
11 correct?

12 A. It was.

13 Q. So I can't really tell looking at A-13, but I would
14 assume that the straight ends of the U-shaped table did not
15 touch the wall; correct?

16 A. Correct.

17 Q. In other words, there was room or distance between the
18 end of either side of the table around which one could walk
19 or move the chair that you took; correct?

20 A. Correct.

21 Q. All right. So you didn't have to move the table to move
22 the chair back inside the U?

23 A. Correct.

24 Q. All right. And --

25 A. May I make a comment about that?

26 Q. Sure you can.

27 A. That's a cropped picture. That's not the complete
28 picture.

1 Q. It's a cropped picture? Do you have --

2 A. I do. My picture shows a partial chair sitting in the
3 inside of the U.

4 Q. Perfect. Let's take a look at that.

5 A. This is the same picture, and there is the U and there
6 is a chair in the middle.

7 Q. All right.

8 A. Whatever reason, that is cropped.

9 MR. MADDEN: Can we have this marked defense next,
10 Your Honor?

11 THE COURT: Any objection?

12 BY MR. MADDEN:

13 Q. Do you have an extra copy of this?

14 A. No, I don't.

15 MS. FILO: Your Honor, I have a complete set of all
16 of the photographs that Det. Chubon took. I'm happy to
17 present them over the lunch hour and have them marked.

18 MR. MADDEN: That will be great.

19 THE COURT: My only reservation, there appears to
20 be four photos on that page.

21 MS. FILO: Right.

22 MR. MADDEN: I'm happy having the one.

23 THE WITNESS: I could tear it out?

24 THE COURT: You feel comfortable with that?

25 MR. MADDEN: Yeah, of course. Where are the
26 scissors?

27 THE COURT: Thank you.

28 MR. MADDEN: May I?

1 THE COURT: Yes.

2 MS. FILO: Your Honor, is it just a thumbnail
3 photo? Like a smaller photo?

4 MR. MADDEN: It looks like a color reproduction.

5 MS. FILO: Right. My only comment, Judge, is that
6 I have a complete set of all of those photographs. I'm happy
7 to have them -- to print them out at the lunch hour and
8 produce them to the Court so they all could be -- could be
9 marked and admitted into evidence.

10 MR. MADDEN: I think we could cut this out and mark
11 it. We could substitute the larger photograph at the lunch
12 hour. I don't have to wait until then to ask him questions.

13 THE COURT: Okay. Investigator, if you have no
14 problems, we'll cut that out and we'll use it for the
15 purposes of questioning this morning. And pursuant to
16 stipulation, later we'll exchange them.

17 MR. MADDEN: Thank you, Your Honor.

18 THE COURT: That will be marked Defense D.

19 (Whereupon, Defense Exhibit D was marked for
20 identification.)

21 BY MR. MADDEN:

22 Q. Thank you very much. So I'm going to show you Defense
23 D. So the record is clear, the small photograph you have
24 appears to extend -- as we're looking at A-13, a little bit
25 more to the right you could actually see one of the chairs
26 that you seized; correct?

27 A. Correct.

28 Q. Okay. I believe you testified earlier that chair SYO-01

1 was taken from behind the U-shaped desk; is that correct?

2 A. Um, I'm not familiar with which two -- which one is
3 SYO-01 and SYO-02 on the chairs labeling-wise?

4 Q. Let me ask it this way. Did you make any notation
5 anywhere on any report that would tell you for sure where
6 each of those chairs was taken from?

7 A. In my report, no.

8 Q. So this is from memory?

9 A. From the photographs, one doesn't have a tag in the
10 photograph.

11 Q. The photographs that you are referring to are the chairs
12 in the classroom of the photograph?

13 A. Correct.

14 Q. Are they together?

15 A. No.

16 Q. Which photograph are you referring to?

17 A. There is a couple of -- a chair next to a teacher's desk
18 that doesn't have a tag -- where a chair does not have a tag.

19 Q. And is that depicted in any of the photographs in
20 Defense A-1 through 13?

21 A. Um, there is -- I'm not certain if that's all of the
22 pictures.

23 Q. For example, in A-1 you could tell looking at this
24 whether or not this chair has a tag?

25 A. I can.

26 Q. And the tag is -- if it was there, where should it be?

27 A. On top.

28 Q. On top?

1 A. In the crease of the chair where somebody would sit.

2 Q. Okay. What about the cropped photograph? Could you
3 form an opinion about what chair that is from looking at the
4 cropped photograph?

5 A. No.

6 Q. What about Defense A-2, could you form any opinion about
7 the orientation or whether or not that chair has a tag on it
8 from that photograph?

9 A. No.

10 Q. So you indicated -- excuse me. My voice is giving out.

11 You indicated that you were the finder, but that
12 afternoon, that is the afternoon of the 9th, there were some
13 crime scene people that came out. Are those the words you
14 used?

15 A. The afternoon of January 10th I was present when some
16 crime scene technicians were there.

17 Q. All right. And their work appeared to be limited to
18 using ALS lights; is that correct?

19 A. Correct.

20 Q. Do you have any recollection of approximately when that
21 was on the afternoon of the 10th?

22 A. Just approximate, I believe they were busy on another
23 investigation, and because the classroom had windows, we had
24 to wait for it to get a little bit darker in the late
25 afternoon, so when the lights were turned off, the classroom
26 was still dark.

27 Q. So the natural light in the classroom was such that it
28 didn't lend itself to an ALS effort in the middle of the day?

1 A. It would interfere, correct.

2 Q. So that's the only reason they came in later, or also
3 because they were working another case?

4 A. Both.

5 Q. Now, I want to make sure I understand, you were present
6 for that ALS search; correct?

7 A. Correct.

8 Q. And with respect to Defense Exhibit A-2, would they
9 have -- I get the impression from your testimony they were
10 essentially trying to fluoresce the carpet; is that correct?

11 A. The focus was the floor, yes.

12 Q. Okay. So they weren't -- do you recall whether or not
13 they were attempting to fluoresce objects on top of the
14 carpet or limited it to the carpet?

15 A. I believe their focus was the carpet, the floor.

16 Q. Okay. You were personally present when they did that?

17 A. Yes.

18 Q. Did you help or aid them in suggesting spots, or was it
19 a situation where to be safe do the whole carpet?

20 A. I think it was a collective decision amongst us.

21 Q. To --

22 A. To search the floor, the carpet.

23 Q. The entire carpeted floor?

24 A. The focus was the main areas, but, yes, the full areas.

25 Q. So you witnessed the crime scene technicians fluoresce
26 the entire carpeted area of the classroom?

27 A. Entire is a strong word. From every corner to every
28 corner, I don't know if it was that complete.

1 Q. But your intent was to --

2 A. Focus.

3 Q. -- be that kind of complete?

4 A. Well, to be complete, but focused on the location where
5 people walk.

6 Q. All right. So you were receiving information throughout
7 the afternoon from other members of the sexual assault unit;
8 correct?

9 A. Correct.

10 Q. Including Det. Pierce?

11 A. Correct.

12 Q. And so there were certain areas that appeared to be more
13 significant than others; correct? From an evidentiary
14 standpoint?

15 A. Correct.

16 Q. You really hit those areas hard; correct?

17 A. Correct.

18 Q. You hit the other areas, but maybe not so hard?

19 A. Correct.

20 Q. Is that fair?

21 A. Fair.

22 Q. Okay. So as we look at Defense Exhibit A-1, this
23 photograph appears to have been taken by you from the outside
24 door of the classroom 18 going across the classroom to Mr.
25 Chandler's desk; right?

26 A. Correct.

27 Q. All right. So the area that is depicted in here, in the
28 carpet at least, was one of the areas that -- was one of the

1 hot areas that thoroughly fluoresced?

2 A. Correct.

3 Q. All right. Was that the main area that was thoroughly
4 fluoresced, or were there others that were the hot areas?

5 A. Around the U-shaped table, and there is the large path
6 going towards the student chairs.

7 Q. While we're on the way, A-2 would also depict a hot
8 area; correct?

9 A. Correct.

10 Q. Then A-13 would partially include the area that was one
11 of the hot areas?

12 A. Correct.

13 Q. All right. Being the area of the U-shaped table. And
14 did you say the path that went in front of the U-shaped table
15 to the desk?

16 A. Between the U-shaped table and the teacher's desk, there
17 is a large opening path that goes towards the sink area and
18 the entrance to the classroom, so that whole area, that path.

19 Q. I think you may be incorrect about the sink. Let me see
20 if I could help you. Here's another one.

21 Before I get to that. In Defense Exhibit A-7, you
22 could see from the light on this that that would suggest an
23 open classroom door when that was taken; right? This is the
24 back of the class?

25 A. Correct.

26 Q. Okay. And that -- the area that is carpeted within this
27 diagram would be one of the hot areas?

28 A. Correct.

1 Q. Okay. Let's get back to the sink. I know it's been a
2 long time for you. I'm not expecting you to have perfect
3 recollection. The photograph speaks for themselves; right?

4 A. Correct.

5 Q. Taking a look at Defense Exhibit A-10, I'll represent to
6 you that these are the white boards in the front of the
7 class. The area that you described as the sink in the back
8 is actually in the left front of the classroom; correct?

9 A. The back -- the front would be based on your reference
10 point of view.

11 Q. Okay. If you walked into the main door of the classroom
12 and we're standing a couple of feet inside the door, if you
13 look straight across, you would see Mr. Chandler's desk, and
14 right behind that, that unlockable door is to the next
15 classroom; right?

16 A. Correct.

17 Q. And then if you turn left, at 90 degrees you would see
18 the front of the class and you would see this sink and what
19 appears to be vinyl tile floor along the ground as you looked
20 in a southerly direction, or that --

21 A. Correct.

22 Q. Okay. So the carpet appears to cover the whole class
23 except for this swath over by the sink area and all the way
24 into the back of the class; right?

25 A. Correct.

26 Q. Do you recall if any areas of the vinyl tile were
27 fluoresced?

28 A. Yes.

1 Q. They were?

2 A. Yes.

3 Q. All right. So then the fluorescence included the floor,
4 included the carpet, but some areas you focused more on?

5 A. Correct.

6 Q. All right.

7 With respect to Mr. Chandler's desk, you
8 photographed the desk itself and what was on top of the desk?

9 A. I did.

10 Q. You opened each drawer and photographed the drawer;
11 right?

12 A. I don't know if I photographed the interior of each
13 drawer, but I did some of them.

14 Q. All right.

15 MR. MADDEN: Your Honor, I would like to have four
16 photographs marked defense next in order. I will be
17 satisfied with the letter followed by 1, 2, 3, 4.

18 THE COURT: We'll do E-1, E-2, E-3, and E-4.

19 And as we're having those marked, we'll take the
20 morning recess, ladies and gentlemen.

21 (Whereupon, Defense Exhibits E-1, E-2, E-3, and E-4
22 were marked for identification.)

23 THE COURT: I will order all members of the jury to
24 report to the jury assembly room on the second floor, and
25 we'll call you back at approximately 10:45 on the court
26 clock. We'll be in recess.

27 (Whereupon, a brief recess was taken.)

28 THE COURT: Record will reflect all members of the

1 jury are present, both counsel are present, Mr. Chandler is
2 present. And, Mr. Madden, you were continuing with your
3 cross-examination.

4 MR. MADDEN: Thank you, Your Honor.

5 BY MR. MADDEN:

6 Q. Just a question or two, Mr. Chubon. During the
7 afternoon of January the 10th, 2012, when the crime scene
8 technicians came to fluoresce the classroom, I understand
9 your testimony, that they did not fluoresce any of the
10 student chairs?

11 A. If they did, it was incidental.

12 Q. What does that mean?

13 A. They weren't focused on every single chair, but if they
14 went by the chair, I'm sure that it may have been
15 illuminated.

16 Q. Sort of accidentally when they were trying to do the
17 floor, is that what you mean?

18 A. Correct.

19 Q. To your knowledge, did the accidental fluorescing of any
20 of the chairs reveal any indication of semen stains?

21 A. The incidental fluorescing examination does not reveal
22 any items of evidence.

23 Q. All right. Are you certain that they didn't fluoresce
24 every chair, or are you just assuming they did not?

25 A. I was present. They did not fluoresce every chair.

26 Q. All right. Did you direct or guide them in which chairs
27 to fluoresce?

28 A. The focus was the floor.

1 Q. Okay.

2 MR. MADDEN: Thank you, Your Honor. I have no
3 further questions.

4 THE COURT: Ms. Filo, do you have any redirect?

5 MS. FILO: Yes, Your Honor. It's very brief.

6 THE COURT: Okay.

7 REDIRECT EXAMINATION

8 BY MS. FILO:

9 Q. Det. Chubon, did you actually come to my office in the
10 last -- I don't remember if it was yesterday or last week --
11 and look at a digital copy of the photographs that you took?

12 A. I did.

13 Q. And when we did that, I was actually able to zoom in on
14 the chair that was placed at Mr. Chandler's desk; right?

15 A. Correct.

16 MS. FILO: Your Honor, if I may approach?

17 THE COURT: Yes. Thank you.

18 BY MS. FILO:

19 Q. And I think specifically if you looked at Defense A-3;
20 right?

21 A. Correct.

22 Q. And we were able to very clearly see in A-3 that there
23 is no large white tag as there is in SYO-01; correct?

24 A. Correct.

25 Q. And at that point, Detective, it was just a process of
26 elimination to know that SYO-01, the chair with the tag, was
27 necessarily the one behind the horseshoe table?

28 A. Correct.

1 Q. Thank you.

2 MS. FILO: I have nothing further.

3 MR. MADDEN: Nothing, Your Honor.

4 THE COURT: Okay. Thank you, Investigator. You
5 are excused at this time.

6 THE WITNESS: Thank you.

7 THE COURT: Thank you.

8 MS. FILO: Your Honor, at this time, the People
9 would offer the MBI recording from Wendy.

10 THE COURT: I'm sorry, Ms. Filo. What was your
11 comment?

12 MS. FILO: At this time, the People would offer the
13 MBI recording from victim Wendy.

14 THE COURT: That has not yet been marked?

15 MS. FILO: It has not.

16 THE COURT: That will be People's 15, and the
17 transcript will be 15-A.

18 (Whereupon, People's Exhibits 15 and 15-A were
19 marked for identification.)

20 THE COURT: Ms. Filo, you are going to hand out the
21 transcripts to the jurors?

22 MS. FILO: I am, Your Honor.

23 THE COURT: And both counsel stipulate that the
24 court reporter need not attempt to record the playing of the
25 interview, which is People's 15?

26 MS. FILO: Yes, so stipulated.

27 MR. MADDEN: Yes, Your Honor.

28 THE COURT: Okay. Thank you.

1 (Whereupon, a tape was played, not reported.)

2 THE COURT: Record will reflect that we have
3 completed the playing of the interview of Wendy, which is
4 People's 15. And, members of the jury, if you could pass
5 your transcripts to your right, please.

6 MS. FILO: Your Honor, I meant to state for the
7 record that interview was conducted on January 17th, 2012.

8 THE COURT: Thank you.

9 MS. FILO: Your Honor, may we approach?

10 THE COURT: Yes.

11 (Whereupon, there was a discussion at the bench.)

12 THE COURT: Ladies and gentlemen, based on the time
13 and my discussions with counsel at sidebar, we're going to
14 take the noon recess at this time. I'll order all members of
15 the jury to report to the jury assembly room on the second
16 floor at 1:30 and we'll continue with the trial. We'll be in
17 recess, and I'll meet with counsel in chambers.

18 (Whereupon, the Court took the noon recess.)

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AFTERNOON PROCEEDINGS

1 THE COURT: Thank you, ladies and gentlemen.
2
3 Record will reflect all members of the jury are present, both
4 counsel are present, Mr. Chandler is present in the courtroom
5 as well.

6 MS. FILO: We're missing one counsel.

7 THE COURT: We don't have both counsel. Mr. Madden
8 is not here. Thank you, Ms. Filo.

9 MR. MADDEN: Thank you, Your Honor. Sorry.

10 THE COURT: That's fine. Counsel, yes.

11 MS. FILO: Thank you, Your Honor. At this time,
12 the parties have a stipulation that we would like to present
13 to the jury.

14 The prosecution and the defense stipulate that the
15 defendant's cell phone was seized by Det. Pierce on the
16 evening of Monday, January 9, 2012. The defendant's
17 computers were seized from his home several weeks after his
18 arrest. All devices were subjected to a forensic search, and
19 the following video taken from the defendant's iPhone was the
20 only item discovered which held evidentiary value to this
21 case.

22 THE COURT: Mr. Madden, you enter into that
23 stipulation?

24 MR. MADDEN: I do, Your Honor.

25 THE COURT: Ms. Filo, as well?

26 MS. FILO: Yes, Your Honor.

27 THE COURT: Ladies and gentlemen, the statement
28 that Ms. Filo just said, you must accept it as true since

1 there is no dispute between the parties.

2 MS. FILO: Your Honor, with that, the People would
3 play the video, and I'll warn the jury that it's very short.
4 I think 30 seconds.

5 THE COURT: This is going to be --

6 MR. MADDEN: 34, I think.

7 THE COURT: This will be People's 16, I believe.

8 (Whereupon, People's Exhibit 16 was marked for
9 identification.)

10 (Whereupon, a tape was played, not reported.)

11 THE COURT: Okay. Thank you. We just completed
12 playing People's 16.

13 MS. FILO: Thank you, Your Honor. Your Honor, at
14 this time, subject to the resumption of Officer Pierce's
15 testimony, which I believe we're going to take up later, the
16 People rest.

17 THE COURT: Okay.

18 MS. FILO: I should say subject to also the
19 admission of the exhibits.

20 THE COURT: So both sides are agreeing that we
21 could take Officer Pierce later on out of order; correct, Mr.
22 Madden?

23 MR. MADDEN: Yes. I have no problem with that,
24 Your Honor.

25 THE COURT: Okay. Because of the agreement of both
26 parties, Mr. Madden, I understand that you're prepared to
27 call your first defense witness?

28 MR. MADDEN: I am. The defense would call Dorothy

1 Catangay.

2 DOROTHY CATANGAY,

3 Being called as a witness on behalf of the
4 Defendant, having been first duly sworn, was examined and
5 testified as follows:

6 THE CLERK: For the record, ma'am, please state and
7 spell your first and last name.

8 THE WITNESS: Okay. My first name is Dorothy,
9 D-o-r-o-t-h-y. My last name is Catangay, C-a-t-a-n-g-a-y.

10 THE COURT: Thank you, ma'am. The lawyers are
11 going to be asking you some questions. It's important that
12 you let them finish the question before you begin your
13 answer, so that two people are not speaking at the same time.
14 I would ask you to please listen to the question and make
15 every effort just to answer what is being asked. The
16 question calls for a yes or no, you need to verbally say yes
17 or not. And if you hear one of the lawyers say objection,
18 don't answer the question. I will rule. If I overrule the
19 objection, you will be allowed to answer. If I sustain the
20 objection, the lawyer will ask you another question.

21 There is a couple of items right there by you.
22 Could you hand these to me, please? Thank you very much.

23 All right. Direct examination, Mr. Madden.

24 MR. MADDEN: Thank you, Your Honor.

25 DIRECT EXAMINATION

26 BY MR. MADDEN:

27 Q. Ms. Catangay, I apologize. It sounded like I
28 mispronounced your name when I called you?

1 A. That's okay. It's Catangay.

2 Q. Catangay, like e-y-e, it sounds like?

3 A. Like Cognac. Catangay.

4 Q. Okay. All right.

5 So you are recently retired; correct?

6 A. Yes.

7 Q. When did you retire?

8 A. June 7th was my last day.

9 Q. And that was your last day where?

10 A. At Evergreen School District.

11 Q. Were you teaching at O.B. Whaley the whole time you were
12 at the Evergreen School District?

13 A. Yes.

14 Q. When did you begin teaching at the Evergreen School
15 District?

16 A. Oh, in I believe 1993.

17 Q. Okay. And what grade did you teach?

18 A. I taught second and third grade.

19 Q. Okay. In the year -- the school year 2011/2012, what
20 room are you assigned to?

21 A. Room 16.

22 Q. And is that room adjacent to Mr. Chandler's classroom?

23 A. Yes, it is.

24 Q. Or it was?

25 A. Yes.

26 Q. All right. How long were you -- how many years were you
27 in room 16?

28 A. You are asking me to do the math?

1 Q. I will take an estimate.

2 A. Okay. So at least 15 years.

3 Q. All right. And as of the 2011/2012 school year, can you
4 give me an estimate of how long Mr. Chandler had been
5 assigned to room 18?

6 A. I believe we moved classrooms around, so I believe it
7 was at least eight years.

8 Q. So if I'm doing my math correctly, if he was there eight
9 years in that room and you were 15, you spent at least eight
10 years as adjacent school teachers?

11 A. Yes.

12 Q. Okay.

13 MR. MADDEN: Your Honor, I have a couple of
14 photographs that I would like marked defense next. We could
15 take the next letter with the numbers 1 and 2?

16 THE COURT: I'm sorry?

17 MR. MADDEN: Before I do that --

18 THE COURT: This will be -- next in order would be
19 F.

20 THE CLERK: F-1 and F-2?

21 MR. MADDEN: Yes.

22 (Whereupon, Defense Exhibits F-1 and F-2 were
23 marked for identification.)

24 MR. MADDEN: For the record, Your Honor, these are
25 two photographs of partially depicting I believe classroom 19
26 at O.B. Whaley School.

27 THE COURT: Thank you.

28 MR. MADDEN: Thank you. May I approach the

1 witness, Your Honor?

2 THE COURT: Yes. Thank you.

3 BY MR. MADDEN:

4 Q. Ms. Catangay, I'll give you these. We'll talk about
5 these in a moment. I'll wait for you to put your glasses on.

6 A. Thank you.

7 Q. We share the same problem. So let me first get my
8 pointer.

9 I would like to direct your attention to the white
10 board, photograph leaning against the wall to your right,
11 this has been previously identified as Defense Exhibit A-2.
12 Okay? I'm sorry. I didn't cover one more thing with you.
13 You will need to answer my questions with a yes or no as
14 opposed to shaking. I'm not trying to be rude, but we have
15 to get everything down. The court reporter could only get
16 down words.

17 A. Okay.

18 Q. All right. So turning your attention to photograph A-2,
19 could you tell me what that is?

20 A. Well, this looks like this is Mr. Chandler's classroom.

21 Q. Correct. All right.

22 Would this be the same subject matter only from a
23 different angle?

24 A. Yes.

25 Q. And would it likewise -- when I say this, I was
26 referring to Defense Exhibit A-1. And would Defense Exhibit
27 A-3 also depict the same subject matter, that is Mr.
28 Chandler's class, but from a different angle?

1 A. Yes.

2 Q. Okay. So all of these photographs have a number of
3 things in common, not the least of which is Mr. Chandler's
4 desk; correct?

5 A. Yes.

6 Q. There appears in each of the photographs to be a door?

7 A. Yes.

8 Q. And this is the door to your class; correct?

9 A. Yes.

10 Q. All right. Does your class -- strike that.

11 I'm going to show you two photographs marked F-2 --
12 Defense F-2 and Defense F-1. Can you tell me what those
13 photographs depict?

14 A. Okay. F-2 depicts the interior of my classroom.

15 Q. Specifically?

16 A. With the door closed.

17 Q. The door that you share with Mr. Chandler?

18 A. Yes.

19 Q. And in that photograph, the door between the two classes
20 is closed?

21 A. It's closed.

22 Q. And the second one?

23 A. Okay. The second picture the door is open between the
24 two classrooms.

25 Q. I'm sorry. Did you finish?

26 A. Yes, I have.

27 Q. Photographs F-1 and photographs F-2, do those appear to
28 be taken from your class towards the door you share with Mr.

1 Chandler?

2 A. Yes.

3 Q. Okay. Now, would it be a fair statement that from a
4 standpoint of how the class is set up, that is the doors, the
5 entrances, the white boards, the sinks, that your class
6 basically is the opposite image of Mr. Chandler's classroom?

7 A. Yes, they are opposites.

8 Q. Okay. Now -- I'm sorry. During the 2011/2012 school
9 year, you taught what grade?

10 A. Third grade.

11 Q. Okay. And do you remember what grade or grades Mr.
12 Chandler was teaching that year?

13 A. Mr. Chandler had a combination classroom, second and
14 third grade.

15 Q. Okay. So half of his kids were doing the same things
16 your kids were doing?

17 A. Basically, yes.

18 Q. Okay. Now, let me ask you some general questions about
19 your custom and habit as a teacher at O.B. Whaley.

20 A. Um-hum.

21 Q. It's my understanding that some teachers leave when
22 school is over, almost immediately, but they get there early
23 the next morning to prepare the lesson for that day?

24 A. Yes.

25 Q. Also, my understanding is that there is a different
26 approach by other teachers, where you would stay later and
27 prepare your lesson for the day, then go home and arrive
28 basically when school started?

1 A. Yes.

2 Q. All right. And which camp did you fall into?

3 A. The first one, early arrival and to leave early.

4 Q. What time typically would you get to school?

5 A. Around 6:30; 6:15, 6:30 in the morning.

6 Q. At that time was the parking lot filled with teachers?

7 A. No.

8 Q. Was it common for you to be the first or second one
9 there?

10 A. I was usually the third one there. The janitor, one
11 other teacher, and then I would arrive.

12 Q. All right. And you knew Mr. Chandler for many years;
13 correct?

14 A. Yes.

15 Q. And was he in the group of teachers that arrived early
16 in the morning?

17 A. No.

18 Q. He was not?

19 A. No.

20 Q. All right.

21 A. You know, if you will rephrase your question? Repeat
22 your question again?

23 Q. Did you find Mr. Chandler also to be a teacher who liked
24 to get to school early?

25 A. You mean before starting time?

26 Q. Yes.

27 A. Okay. Yes, before starting time.

28 Q. I'm sorry if I asked a poor question. I apologize.

1 So his habit was like yours? He would get there
2 early and prepare his lessons for the day?

3 MS. FILO: Objection, Your Honor. Calls for
4 speculation.

5 THE COURT: Well, I'm going to ask you to rephrase
6 the question. I think it misstates what she responded to.

7 BY MR. MADDEN:

8 Q. What would you estimate as the typical time that Mr.
9 Chandler arrived at school Monday through Friday?

10 A. That is a very difficult question because I'm usually --
11 with the routine that we have, I'm usually on the other side
12 of campus or something, or running back and forth, so that's
13 difficult to say.

14 Q. Okay.

15 A. But I would estimate maybe around 7:30 or so.

16 Q. Okay. All right.

17 Now, could you -- do you recall what the school
18 schedule was in terms of -- in the year 2011/2012, what the
19 schedule was at school in terms of recess and lunch and first
20 bell and end of school?

21 A. Well, let's see. We had staggered lunches according to
22 grade level, and we also -- so our schedules for lunches had
23 changed because we had, you know, some change in command as
24 far as principal and things like that. So a recess -- I
25 could tell you -- maybe recess I will be more helpful to you.
26 Recess was usually Monday, Tuesday, Wednesday, and Friday
27 from 10:10 to 10:30, something like that. On Thursdays,
28 10:00 o'clock to 10:15.

1 Q. Thursday was more of a compressed day?

2 A. Yes, because we had an early day or shortened day.

3 Q. Because there were meetings in the afternoon for
4 teachers?

5 A. Early dismissal as a routine when there is meetings or
6 in-services for teachers.

7 Q. Okay. Then do you remember what time school started?

8 A. School started at 8:30. We had 8:30 -- that year it was
9 8:30, Thursdays 8:00 o'clock and -- Thursdays, because it was
10 early day, 8:00 o'clock.

11 Q. But the normal day it was 8:30?

12 A. 8:30.

13 Q. All right. How about tardies? Do you know what the
14 system was for tardies?

15 A. Students would -- if they are tardy, they needed to go
16 through the office to the secretary to receive a tardy slip.

17 Q. All right. Was there some grace period between 8:30 and
18 8:45, where perhaps a student came during that time and
19 wouldn't get an official tardy?

20 A. That's -- I think sometimes it was maybe a five-minute
21 period.

22 Q. Okay.

23 A. That's around a five-minute period.

24 Q. All right. So there was some leniency shown by some
25 people, even though a student was technically tardy?

26 A. Some teachers.

27 Q. Not you?

28 A. No.

1 Q. Okay. All right.

2 Was there a place where the teachers gathered for
3 lunch or recess to socialize or have food?

4 A. Yes.

5 Q. What was that area called?

6 A. The staff room, teachers' staff room.

7 Q. All right. Would it be fair and accurate to call you a
8 staff room person as a teacher?

9 A. No.

10 Q. All right.

11 A. No.

12 Q. You didn't hang out in the staff room?

13 A. No, I did not.

14 Q. All right. So let me go over the times that teachers
15 would potentially go to the staff room. I take it, one might
16 be before school?

17 A. Before school, yes.

18 Q. I take it, the next opportunity would be perhaps at the
19 morning recess?

20 A. Recess, yes.

21 Q. Which was, in essence, 20 minutes in duration?

22 A. Yes.

23 Q. All right. And then perhaps again at lunch?

24 A. Yes.

25 Q. All right. And would there be any other time during the
26 day that teachers would typically be in a staff room?

27 A. Um, because of the different schedules between the grade
28 levels or the lunches, or sometimes there was prep --

1 different prep periods for upper grades, they may be in there
2 at that time.

3 Q. All right.

4 A. Or after school.

5 Q. Okay. But you tended not to go to the staff room during
6 any of those times; right?

7 A. I only would walk through the staff room and make
8 greetings to people and then do my drive-by and then back to
9 the classroom.

10 Q. All right. So then it sounds like you spent almost all
11 of your day in the classroom itself?

12 A. Most of it.

13 Q. Now, there were times, for example, at the morning
14 recess period where teachers were periodically assigned yard
15 duty and such; correct?

16 A. Yes.

17 Q. Sometimes you were assigned duty in the morning before
18 school?

19 A. Yes.

20 Q. And sometimes you will be assigned duty after school
21 when the kids left?

22 A. In the morning, after school, during school also. A
23 week at a time we have to schedule -- that was scheduled for
24 a week.

25 Q. All right. So in situations where you didn't have any
26 assigned duty --

27 A. Yes.

28 Q. -- there were plenty of weeks when that was the case;

1 right?

2 A. No. It was every other week.

3 Q. Every other week?

4 A. Yes.

5 Q. So half the time?

6 A. Yes.

7 Q. When you didn't have an assigned duty, you spent
8 essentially your days in your classroom during those periods
9 that I talked about: recess, lunch; correct?

10 A. Recess, lunch, unless I had to confer with a specialist
11 or something on the child. So those I would have to take the
12 opportunity at the time to discuss a child. If I had
13 meetings with a specialist or what we call SS team meetings
14 or IP meetings.

15 Q. The door between your classroom and Mr. Chandler's
16 classroom, was it locked?

17 A. No.

18 Q. So all you had to do was turn the handle?

19 A. Yes.

20 Q. All right. There was no key, no lock whatsoever;
21 correct?

22 A. No.

23 Q. That's correct?

24 A. That's correct. Sorry. I'm sorry.

25 Q. Thank you. All right.

26 And during a typical week, would you ever have an
27 occasion to go into Mr. Chandler's classroom during school
28 hours?

1 A. No, not unless it was -- we had what we call, like, a
2 rainy day schedule, and then we would have yard duty turn.
3 If I did not have yard duty, there would be persons that
4 would circulate to give restroom breaks, things like that.
5 So, you know, we open the doors between the classrooms, and
6 that's the only opportunity.

7 Q. Do you recall Mr. Chandler ever coming into your class
8 to cut through your class to go anywhere?

9 A. He always did.

10 Q. Now, when you say "he always did," what did you mean?

11 A. He would open the door and just walk through.

12 Q. All right. Would that be just any random time or were
13 there specific times that you would --

14 A. Recess time or, you know, if he was coming back from
15 somewhere. My door would be open, the door opposite our --
16 you know, adjoined doors would be open, so he'd walk through
17 if he saw that my door was open and just walk straight
18 through to his classroom.

19 Q. All right. Going through from his class through your
20 door and then out your main door, that was a bit of a
21 shortcut for him to go to the teachers' parking lot or to the
22 office; right?

23 A. Yes.

24 Q. Okay. And he often did that?

25 A. Yes.

26 Q. You recall morning recess as a time when he often went
27 through your class?

28 A. It wasn't just morning recess. It's -- yes.

1 Q. First of all, let's limit it to morning recess?

2 A. Morning recess.

3 Q. You have a distinct recollection it was common for him
4 to go through the class morning recess?

5 A. Not all of the time, but sometimes.

6 Q. Okay. What other times did you see him going through
7 your --

8 A. Well, I mean, not specifically all -- you know, every
9 morning recess. Only every once in a while he will go
10 through.

11 Q. Okay. What other times do you remember him going
12 through your class?

13 A. Sometimes after school, a couple of times. So after
14 school it would only be -- you know, that only occurred about
15 a couple of times he'd come through.

16 Q. You also recall him coming into your class through your
17 main door and through the adjoining door into his classroom
18 many times too; right?

19 A. Mainly he would come from his classroom and walk through
20 my classroom door.

21 Q. Okay. Did you ever have to exchange teacher materials
22 with him, like keys, test keys, or answers, or anything like
23 that you remember?

24 A. No.

25 Q. Supplies or anything like that?

26 A. No.

27 Q. Okay. Now, in photograph A-1 and A-3, it appears that
28 Mr. Chandler's desk is very near the wall, next to the door;

1 correct?

2 A. Yes.

3 Q. And we don't have any photographs of your class
4 depicting the desk during the year -- school year 2011/2012.
5 Where was your desk in your room relative to Mr. Chandler's
6 desk?

7 A. Actually, I didn't have a desk.

8 Q. You didn't have a desk?

9 A. I have a table where I worked with small groups. I
10 didn't use a desk because I didn't sit at a desk.

11 Q. Where was your table located in your room relative to
12 Mr. Chandler's desk?

13 A. My table was located on -- just beyond that wall. If
14 you walk into the classroom, you go left, my table where I
15 work in a small group was right there against that wall.

16 Q. So you are referring to Exhibit A-3?

17 A. Yes.

18 Q. You're referring to the door between your classes?

19 A. Yes.

20 Q. If that door was open, would your desk -- your table be
21 more or less in the same relative position as Mr. Chandler's?

22 A. Yes. It was just -- well, actually, yes.

23 Q. Okay. So what would you estimate as the -- I will take
24 an estimate -- the distance from the corner of Mr. Chandler's
25 desk to the corner of your table?

26 A. It would have to be about ten feet.

27 Q. Okay. Thank you.

28 Unless you had a specific duty in terms of

1 supervising children during the morning recess, during
2 morning recesses you were in your classroom, probably at your
3 table; correct?

4 A. No.

5 Q. No? Where were you?

6 A. Most likely -- I only worked at that table if I had a
7 small group of children.

8 Q. Okay.

9 A. Okay. And during recess, most likely -- I was very
10 dynamic, so I was doing chores and things like that, doing
11 little tasks that I had to do for the day.

12 Q. You were all over the classroom?

13 A. Yes.

14 Q. There was no particular place where you kept your stuff?

15 A. No.

16 Q. All right. It was all over?

17 A. I was tidy, but it wasn't all over.

18 Q. I'm not suggesting otherwise.

19 A. Yes.

20 Q. All right. At lunchtime, you were not a person that
21 joined the other teachers for lunch. So I would assume you
22 had lunch in your classroom?

23 A. I had lunch in my classroom often, yes.

24 Q. All right. Unless you had some specific duty or meeting
25 or something?

26 A. Yes.

27 Q. Okay. So absent that, you could be found in your
28 classroom?

1 A. I could be found in my classroom, yes.

2 Q. All right. At any time during the school year
3 2011/2012, for that matter, 2010/2011, the year before, do
4 you recall ever hearing anything unusual coming from Mr.
5 Chandler's classroom during either the morning recess or the
6 lunch recess?

7 A. No.

8 Q. All right. Thank you.

9 MR. MADDEN: I have no further questions.

10 THE COURT: Thank you.

11 Cross-examination, Ms. Filo.

12 MS. FILO: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. FILO:

15 Q. Good afternoon, Ms. Catangay.

16 A. Good afternoon.

17 Q. So school did not have a recognized curriculum; is that
18 correct?

19 A. Yes, you -- what do you mean by recognized?

20 Q. Did every third grade teacher teach the same thing every
21 day that another third grade teacher would teach?

22 A. I see. We had what we call differentiated instructions.
23 So, of course, by the state and district curriculum, you
24 know, we had to go by that curriculum, but sometimes the
25 make-up of the classroom would dictate what is taught at a
26 certain time and what level it's taught.

27 Q. Okay. So teachers had some discretion as to what it was
28 that they could teach on a daily basis within their

1 classroom?

2 A. It depends on where the students were. If you had a
3 higher-achieving student or combination classroom where there
4 were more independent students from, say, second-graders that
5 were independent and there were no behavior problems, or
6 third-graders that were in the same -- you know, not
7 necessarily high-achieving, but independent workers, that
8 would dictate the instruction.

9 Q. Okay. So, Ms. Catangay, in the -- you were a teacher
10 for 20 years; is that right?

11 A. Yes.

12 Q. And did you always teach in the sort of second/third
13 grade age group?

14 A. Yes.

15 Q. Ms. Catangay, have you ever heard of a student being in
16 a classroom blindfolded alone with a teacher while things
17 where being put in their mouth other than this case?

18 A. No.

19 Q. Could you think of any educational purpose that that
20 would serve at all?

21 A. No.

22 Q. Ms. Catangay, in the several years that you shared this
23 door with Mr. Chandler's classroom, did you ever walk into
24 his classroom during school hours: recess, lunch, or
25 otherwise, unannounced?

26 A. There were times where I'd open the door if I -- like I
27 said, the rainy days schedules, where if I -- you know,
28 teachers would relieve each other to go out to the restroom,

1 something like that, if we do not have a yard duty person
2 circulating. And that's the only time.

3 Q. But that was scheduled; right?

4 A. Yes, that was a scheduled.

5 Q. I mean --

6 A. Yes. But unscheduled, no, I can't recall.

7 Q. Can't think of a single incident you would have walked
8 into his classroom unannounced?

9 A. No.

10 Q. Thank you.

11 MS. FILO: Nothing further, Your Honor.

12 THE COURT: Redirect?

13 MR. MADDEN: Nothing, Your Honor.

14 THE COURT: May this witness be excused?

15 MR. MADDEN: Yes. Thank you.

16 THE COURT: Thank you, ma'am. You are excused and
17 you are free to leave.

18 THE WITNESS: Okay. Thank you.

19 THE COURT: Next witness?

20 MR. MADDEN: Your Honor, may I have a few minutes?

21 THE COURT: Yes.

22 MR. MADDEN: Your Honor, I need about ten minutes.
23 I apologize.

24 THE COURT: Am I correct, there are witnesses
25 outside?

26 MR. MADDEN: Yes, I have two.

27 THE COURT: I understand. Based on our earlier
28 conversations, ladies and gentlemen, we're going to take a

1 short break and we'll call you back up before 2:30. So
2 hopefully we'll try to make it close to ten minutes as
3 possible.

4 I'll order the jurors to please report to the jury
5 assembly room on the second floor.

6 (Whereupon, a brief recess was taken.)

7 THE COURT: We'll go back on the record. Both
8 counsel are present, Mr. Chandler is present, and all members
9 of the jury are present.

10 Mr. Madden.

11 MR. MADDEN: Your Honor, our first witness is --
12 did you need last names for the children witnesses?

13 THE COURT: Yes.

14 MR. MADDEN: Okay. Our --

15 THE COURT: No objection, why don't we use first
16 names?

17 MR. MADDEN: That's fine.

18 MS. FILO: That's fine.

19 MR. MADDEN: Veronica will be our first witness.

20 VERONICA DOE,

21 Being called as a witness on behalf of the
22 Defendant, having been first duly sworn, was examined and
23 testified as follows:

24 MR. MADDEN: There is couple of steps up there.
25 Why don't you see if you could get up there and get into the
26 chair. Okay? Very good.

27 Now, would you do me a big favor and scoot the
28 chair forward so I could get the microphone, you know, maybe

1 about this close to your mouth? That's perfect. Okay? All
2 right.

3 THE COURT: First of all, Veronica, we need you to
4 spell your name.

5 THE WITNESS: V-e-r-o-n-i-c-a.

6 THE COURT: You know, the lawyers are going to ask
7 you some questions. When they ask you a question, you need
8 to say yes or no or talk so we could all hear you. And most
9 children that come into a courtroom are very nervous, so it's
10 okay to be nervous. Okay? And Mr. Madden will go over a few
11 rules with you, if he hasn't already done that. Okay?

12 Mr. Madden, direct.

13 MR. MADDEN: Thank you. Yes.

14 DIRECT EXAMINATION

15 BY MR. MADDEN:

16 Q. Veronica, I want to go over some of the rules with you,
17 okay, to make sure you understand before we start?

18 A. (Shakes head up and down.)

19 Q. You are shaking your head. So the first rule I want you
20 to think about is that if I ask you a question and the answer
21 is yes, don't shake your head up and down. And if the answer
22 is no, don't shake your head left and right. And the reason
23 for that is that the lady in front of you has to get down all
24 of the words that are spoken in court, and she could only get
25 down words. In other words, she can't get down gestures,
26 like shaking your head. Okay?

27 A. Okay.

28 Q. So if you forget and you shake your head up and down

1 when you mean yes, I'll probably say something like: Do you
2 mean yes. Okay?

3 A. Okay.

4 Q. Okay. All right.

5 Now, if I ask you a question and you do not
6 understand my question, just tell me you don't understand it
7 and I'll ask another question that you do understand. Okay?

8 A. Okay.

9 Q. All right. What grade are you in, Veronica?

10 A. I'm going to fourth.

11 Q. And are you at O.B. Whaley?

12 A. Yes.

13 Q. Okay. And you walked into court. That's your mother
14 here in the chair with the smile on her face?

15 A. Yes.

16 Q. All right. You know she's right here. Okay?

17 A. Yes.

18 Q. Okay. Did you have Mr. Chandler as a teacher one of the
19 years that you went to O.B. Whaley?

20 A. Yes.

21 Q. What grade did you have Mr. Chandler for?

22 A. Second.

23 Q. Okay. So when you were in the second grade with Mr.
24 Chandler, was your classroom, if you remember, room 18?

25 A. Yes.

26 Q. Okay. And classroom 18, Mr. Chandler's class, that year
27 actually had second grade students in it and third grade
28 students; right?

1 A. Yes.

2 Q. This was known as a combination class?

3 A. Yes.

4 Q. Okay. And you were one of the second-graders; right?

5 A. Yes.

6 Q. So that probably -- let me guess, that you probably sat
7 on the side of the classroom by the sink and by the
8 computers?

9 A. Yes.

10 Q. With all of the other second-graders; right?

11 A. Yes.

12 Q. Okay. Now, do you remember playing a game that year in
13 Mr. Chandler's class, where you have your eyes covered and
14 you try to guess an object?

15 A. Yes.

16 Q. Okay. And do you remember what you had to feel the
17 object with? That is, what part of your body?

18 A. Yes.

19 Q. What part was that?

20 A. Um, feet and mouth.

21 Q. Okay. Feet and mouth.

22 So you felt -- you were blindfolded for both of
23 them; right?

24 A. Yes.

25 Q. And we'll call the mouth one the taste game. Is that
26 okay?

27 A. Yes.

28 Q. And then we'll call the foot one the feel game. Okay?

1 A. Okay.

2 Q. But with both of them you are trying to guess what the
3 object was; right?

4 A. Yes.

5 Q. Okay.

6 So the game that we talked about, the taste game
7 and the feel game, is that a game that everyone in the class
8 played?

9 A. Yes.

10 Q. So that means boys and girls?

11 A. Yes.

12 Q. Okay. And do you remember how many times you played the
13 game that year?

14 A. Once.

15 Q. Okay. And that was in front of the whole class?

16 A. Yes.

17 Q. Okay. Now, did you do both the taste part of the game
18 and the feel part of the game?

19 A. Yes.

20 Q. Okay. And there was some sort of blindfold put over
21 your eyes so you couldn't see?

22 A. Yes.

23 Q. Do you remember what the blindfold was made of?

24 A. Um, a leather thing.

25 Q. I'm sorry?

26 A. Leather.

27 Q. Leather? Okay.

28 And when you played the taste game, was something

1 in your mouth?

2 A. Yes.

3 Q. Were you standing or seated or in some other position?

4 A. Sitting on the ground.

5 Q. Okay. And then would that have been in the middle of
6 class?

7 A. By the water is where we were sitting.

8 Q. By the water?

9 A. (Shakes head up and down.)

10 Q. You mean where the sink is?

11 A. Yes.

12 Q. Okay. And in terms of feeling objects, do you remember
13 where you were in the class when you were feeling objects on
14 your feet?

15 A. In the same spot.

16 Q. Okay. Over by the --

17 A. Desk and sinks.

18 Q. I'm sorry? I didn't hear you?

19 A. Desk and sinks.

20 Q. Desk and sinks. Okay.

21 And let's talk about the foot game or the feel
22 game. Okay?

23 A. Yes.

24 Q. Okay. So you had a blindfold on of some type?

25 A. Yes.

26 Q. And then the objects that you felt on your feet, what
27 part of your feet do you remember feeling the object being
28 placed on?

1 A. On the center.

2 Q. The center. Now, the center of your foot or part of
3 your leg?

4 A. Foot, foot.

5 Q. The foot. On top of your foot or on the bottom of your
6 foot?

7 A. In the center of the foot.

8 Q. Let me get you to do this. I'm not quite sure I
9 understand what you mean, so I'm going to come up here and I
10 am going to ask you to point where on your feet you mean by
11 the center, then I will describe it. Maybe you could scoot
12 out just a little bit for me and -- a little bit more,
13 please. Go ahead and --

14 A. (Indicating.)

15 Q. So the middle of the bottom of your foot?

16 A. Yes.

17 Q. Like, in the arch of your foot; right?

18 A. Yes.

19 Q. Okay. And were you wearing shoes when that happened?

20 A. No.

21 Q. All right. Were you wearing socks when that happened?

22 A. Yes.

23 Q. Okay. Do you remember the objects that were placed
24 against the arch or the bottom of your foot?

25 A. Yes.

26 Q. Could you tell me what they were?

27 A. A pencil, a pen, and safety scissors.

28 Q. Okay. I'm not sure what safety scissors means. Like,

1 children scissors?

2 A. Yes.

3 Q. They didn't have sharp ends?

4 A. No.

5 Q. Is that what you mean by safety?

6 A. Yes.

7 Q. I guessed that. Okay.

8 And did you ever feel a ball on your foot?

9 A. No.

10 Q. Okay. So when the object that you couldn't see was
11 placed against the bottom of your foot, did the object just
12 stay against that part of your foot or did Mr. Chandler move
13 it around?

14 A. Moved it around.

15 Q. Okay. And you were able to guess what that -- the
16 objects were?

17 A. Sometimes.

18 Q. And sometimes you couldn't; right?

19 A. Yes.

20 Q. Okay. Now, how about the game with -- the taste game?
21 We'll talk about that. Okay?

22 A. Okay.

23 Q. And that game you were blindfolded; right?

24 A. Yes.

25 Q. Was it the same way? In other words, you talked about a
26 leather blindfold before. Was it the same?

27 A. Yes.

28 Q. Was it the same blindfold that was used on the feel

1 game?

2 A. Yes, it was.

3 Q. Okay. And did both of those things happen, like, on the
4 same day?

5 A. Yes.

6 Q. Okay. And so you couldn't see anything, but Mr.
7 Chandler then put some food or candy or something in your
8 mouth; correct?

9 A. Yes.

10 Q. Do you remember -- you couldn't see what he put in your
11 mouth; right?

12 A. No.

13 Q. And do you remember how many different things he put in
14 your mouth?

15 A. Only one.

16 Q. Only one that you remember?

17 A. Yes.

18 Q. What do you remember that being?

19 A. Um, Wonka candy.

20 Q. Wonker [sic] candy? I'm pretty sure, Veronica, I've
21 never had Wonker candy before. Could you tell me what Wonker
22 is?

23 A. It's kind of, like, normal candy, except it was kind of,
24 like, different colors of candy.

25 Q. Could you tell me the shape of it?

26 A. It was round.

27 Q. Okay. Could you -- was it like a lollipop?

28 A. No. It was like a Smartie, like a little round one.

1 Q. Like the shape -- like a ball?

2 A. No. Like a flat one.

3 Q. Flat?

4 A. Yes, like a circle.

5 Q. Okay. And how do you know that it was a Wonker candy?

6 A. Because I remembered when we were watching a movie about
7 it and he handed out some candy.

8 Q. Oh. So you actually one time in class tasted a Wonker
9 before this game; right?

10 A. Yes.

11 Q. You remembered -- when it was in your mouth and you
12 couldn't see it, you remembered tasting the same thing;
13 right? Before?

14 A. Yes.

15 Q. That's why you guessed it was a Wonker candy?

16 A. Yes.

17 Q. Were you right?

18 A. Yes.

19 Q. How do you know? Did you get to see it?

20 A. Yes.

21 Q. All right. Now, do you remember ever telling a police
22 officer about the game that you played in the class?

23 A. No -- yes.

24 Q. Okay. That happened a pretty long time ago; right?

25 A. Yes.

26 Q. More than a year and a half ago; right?

27 A. Yes.

28 Q. Okay. You remember telling him just some food, like

1 candy bars or chips?

2 A. No.

3 Q. Okay. As you sit here today, do you -- does that help
4 you remember whether or not there were any chips or candy
5 bars that you had to taste also?

6 A. Yes.

7 Q. You think you may have?

8 A. Yes.

9 Q. Okay. Do you remember what kind of chips?

10 A. Um, no.

11 Q. Okay. How did you know they were chips?

12 A. Because they were crunchy.

13 Q. Okay. And when the objects were in your mouth, did Mr.
14 Chandler ask you to describe them? Whether they were smooth
15 or crunchy or hard?

16 A. Yes.

17 Q. Okay. So he wanted you to describe them while you're
18 trying to figure out what it is; right?

19 A. Yes.

20 Q. Okay. And then at the same time, did he ask you about
21 the taste of them?

22 A. No.

23 MS. FILO: Objection, Your Honor. Calls for
24 hearsay.

25 THE COURT: Objection is sustained. The answer is
26 stricken.

27 BY MR. MADDEN:

28 Q. So on both of these games, both the feel game and the

1 taste game, it was Mr. Chandler who put the objects either
2 against your feet or in your mouth; right?

3 A. Yes.

4 Q. Okay. Thank you.

5 MR. MADDEN: I have no further questions.

6 THE COURT: Cross, Ms. Filo.

7 MS. FILO: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. FILO:

10 Q. Hi, Veronica.

11 A. Hello.

12 Q. So how many times did you play the game?

13 A. Once.

14 Q. Just one time?

15 A. Yes.

16 Q. Did you see people -- other people play the game?

17 A. Yes.

18 Q. Was that on the same day or a different day?

19 A. Same day.

20 Q. Okay. So you were in Mr. Chandler's class all year
21 long; right?

22 A. Yes.

23 Q. Then the game was only played one time?

24 A. Yes.

25 Q. In the classroom?

26 A. Yes.

27 Q. Okay. Veronica, were you ever asked to stay behind in
28 Mr. Chandler's classroom during lunchtime?

1 A. No.

2 Q. How about recess?

3 A. No.

4 Q. You never had to stay behind? No?

5 A. No.

6 Q. Okay. You never had to -- you never practiced this
7 game, did you?

8 A. No.

9 Q. No? The whole point was you weren't supposed to know
10 what he was using; right?

11 A. Right.

12 Q. Well, if you practiced, that would kind of defeat the
13 purpose, huh?

14 A. Yes.

15 Q. Okay. That's all the questions I have. Thank you,
16 Veronica.

17 A. You're welcome.

18 THE COURT: Redirect?

19 MR. MADDEN: None, Your Honor. Thank you.

20 THE COURT: Veronica, thank you very much. You
21 could step down and go with your mother and you could leave.

22 THE WITNESS: Okay.

23 THE COURT: Thank you. You're all done.

24 MR. MADDEN: Your Honor, I could be excused for a
25 moment, Your Honor?

26 THE COURT: Yes. Thank you.

27 ///

28 ///

1 LY DOE,

2 Being called as a witness on behalf of the
3 Defendant, having been first duly sworn, was examined and
4 testified as follows:

5 MR. MADDEN: All right, Ly. I'm going to ask you
6 to do me a favor. If you would scoot your chair forward a
7 little bit. What I want you to do is to get in far enough
8 forward so that the microphone is just about like this. So
9 if you would keep your mouth about that close to the
10 microphone, we'll all be able to hear you. Okay?

11 THE WITNESS: Yes.

12 MR. MADDEN: You're a little nervous, it's okay.

13 THE COURT: Okay. Good afternoon.

14 THE WITNESS: Good afternoon.

15 THE COURT: What's your name?

16 THE WITNESS: Ly.

17 THE COURT: How do you spell it?

18 THE WITNESS: L-y.

19 THE COURT: Ly, the lawyers are going to ask you
20 some questions. Mr. Madden will go over the rules about how
21 you answer the question.

22 THE WITNESS: Yes.

23 THE COURT: As he already asked you, if you're
24 nervous, that's okay. Most kids your age are nervous when
25 they come into the courtroom. Okay?

26 THE WITNESS: Yes, sir.

27 THE COURT: Direct, Mr. Madden.

28 MR. MADDEN: Thank you, Your Honor.

DIRECT EXAMINATION

1 BY MR. MADDEN:

2 Q. All right, Ly. I want to just tell you a couple of
3 rules and I want you to listen. I want to make sure you
4 understand. Okay?

5 A. Okay.

6 Q. So the first thing I want to talk about is that when I
7 ask you a question, if the answer is yes, I want you to say
8 yes out loud, not shake your head up and down. Okay?

9 A. Yes.

10 Q. All right. Then if the answer is no, I want you to say
11 no out loud, not to shake your head left and right. Okay?

12 A. Yes.

13 Q. Okay. And then finally, I want to tell you that I want
14 to make sure before you answer that you understand my
15 question. Okay?

16 A. Yes.

17 Q. So if I ask a question and you don't understand it, tell
18 me to stop, tell me that you don't understand, and I'll ask
19 the question in a different way so that you do understand.
20 Okay?

21 A. Yes.

22 Q. All right. Now, Ly, what grade are you in?

23 A. I'm in third grade and I'm about to turn fourth.

24 Q. Okay. So you are going to start the fourth grade
25 actually next month; right?

26 A. Yes.

27 Q. Okay. Do you go to O.B. Whaley?

1 A. Yes.

2 Q. Okay. So you were in Mr. Chandler's class when you were
3 in what grade?

4 A. Second.

5 Q. Do you remember what Mr. Chandler's classroom number
6 was?

7 A. Um, no.

8 Q. Okay. If I were to tell you that Mr. Chandler was in
9 the room 18, would that help you remember what classroom it
10 was?

11 A. Yes.

12 Q. Was it room 18?

13 A. Yes, it was room 18.

14 Q. Okay. Now, that year that you were in the second grade,
15 you were in a class that actually had second-graders and
16 third-graders; right?

17 A. Yes.

18 Q. So as a second-grader, you probably sat on the side of
19 the classroom near the computer and the same side that the
20 sink was on, because that's where all the second-graders sat;
21 right?

22 A. Yes.

23 Q. The third-graders were on the other side of the
24 classroom; right?

25 A. Yes.

26 Q. Okay. I'm going to ask you some questions about a taste
27 game and a feel game that you played in Mr. Chandler's class
28 when you were in the second grade. Okay?

1 A. Yes.

2 Q. All right. Do you remember about a year and a half ago
3 talking to a police officer about the taste game and the feel
4 game and Mr. Chandler's class?

5 A. No.

6 MS. FILO: Objection, Your Honor. Calls for
7 hearsay.

8 MR. MADDEN: No, it doesn't, Your Honor.

9 THE COURT: Um, I'm going to allow the answer to
10 remain. He said no.

11 MR. MADDEN: Okay.

12 BY MR. MADDEN:

13 Q. You don't remember that?

14 A. No.

15 Q. Okay. That's all right. It was a pretty long time ago
16 that you were in Mr. Chandler's class; right?

17 A. Yes.

18 Q. All right. Now, do you remember playing a game where
19 you were blindfolded and had to guess what an object was?

20 A. No.

21 Q. Do you remember playing a game where you were
22 blindfolded and had to taste something that was in your mouth
23 and try to guess what it was?

24 A. Yes.

25 Q. Okay. Tell me about that game. Were your eyes covered?

26 A. No. We didn't use a blindfold, but, like, he used his
27 hand to cover my eyes and then, like, we took turns trying to
28 taste what food that we had.

1 Q. Okay. That's very good, but I want to sort of break
2 that into parts. You don't -- you remember something being
3 over your eyes, but it wasn't a blindfold?

4 A. Yes.

5 Q. You know what a blindfold is; right?

6 A. Yes.

7 Q. Okay. I think you said that you remember Mr. Chandler's
8 hands being over your eyes; is that right?

9 A. Yes.

10 Q. Yes?

11 A. Yes, that's right.

12 Q. Okay. Was this game played that you're talking about in
13 front of the whole class?

14 A. Yes.

15 Q. And did -- sometimes did you play this game alone with
16 Mr. Chandler?

17 A. No.

18 Q. Okay. Could you tell me, this game that was played in
19 front of the whole class, did everyone play?

20 A. Yes, everyone played.

21 Q. And that meant boys and girls?

22 A. Yes, boys and girls.

23 Q. Okay. Do you remember how many times you played this
24 game?

25 A. No.

26 Q. Okay. But we know you played it at least one time;
27 right?

28 A. Yes.

1 Q. Okay. So do you remember times when you didn't play the
2 game, but you watched others play the game?

3 A. Yes.

4 Q. That was the whole class?

5 A. Yes, that was the whole class.

6 Q. Okay. Do you think you remember seeing the game played
7 more than ten times?

8 A. No.

9 Q. Less than ten times?

10 A. Yes.

11 Q. But you're not sure how many times? Just some number
12 less than ten?

13 A. Yes.

14 Q. Okay. Now, let's talk about the game where you have to
15 taste something. Tell me how that worked.

16 A. So he would go in his cabinet behind the board. There
17 would be some food in there, but it hadn't expired. He
18 would, like, open a ziplock or so --

19 Q. I'm sorry. I didn't hear what you just said?

20 A. He would, like, open a ziplock or something else, and
21 then he would, like, make us open our mouth, he would put it
22 in, and says -- tell us to chew it, and then we would have to
23 guess what it is.

24 Q. Okay. Now, when you said "he would tell us," how many
25 people would there be that were doing the taste game?

26 A. 24.

27 Q. Everybody in the class?

28 A. Yes.

- 1 Q. Okay. So how did he cover your eyes?
- 2 A. He didn't touch our eyes, but he just covered it.
- 3 Q. You remember what he covered it with?
- 4 A. Just his bare hands.
- 5 Q. So he just put his -- he didn't touch your face, but he
- 6 put his hands so you couldn't see what the object was?
- 7 A. Yes.
- 8 Q. Okay. And then when the object went into your mouth, he
- 9 told you to chew it?
- 10 A. Yes.
- 11 Q. Did he tell you to taste it?
- 12 A. Yes.
- 13 Q. Did he tell you to lick it?
- 14 A. No.
- 15 Q. All right. And was the idea to try to guess what it
- 16 was?
- 17 A. Yes.
- 18 Q. And how many different types of candy or food do you
- 19 remember going into your mouth to try to guess what it was?
- 20 A. One.
- 21 Q. Okay. And did you guess?
- 22 A. Yes.
- 23 Q. Did you guess right?
- 24 A. Sometimes.
- 25 Q. Okay. Sometimes you couldn't guess it?
- 26 A. Yes.
- 27 Q. All right. Do you remember having to play a game to
- 28 have to walk without bumping into something?

1 A. Yes.

2 Q. Tell me about that game.

3 A. So he would clear out the desks and then he would make
4 us close our eyes. We couldn't cheat. So then we would walk
5 up straight and then, like, try to touch his hands. And then
6 if we touched his hands, then the team that the person first
7 touched the hand would win.

8 Q. Okay. Do you remember a game where you lied down and
9 then feel something with either your hand or your foot and
10 trying to guess what it was?

11 A. Yes.

12 Q. Did this happen in front of the whole class?

13 A. Yes.

14 Q. Okay. Tell me about that game.

15 A. He would make us lay on the carpet. He would put
16 either, like, a glove, his hands, or something, or -- so
17 something. And then he would try to, like, let us feel it
18 for a while and then ask what it is.

19 Q. Okay. And would you feel things with both your hands
20 and your feet?

21 A. He would use one object and then switch hands and then
22 switch feet.

23 Q. So he would use one object and then let you feel it on
24 your hand and then let you feel the same object on your feet?

25 A. Yes.

26 Q. Okay. When you have the object on your feet, were you
27 wearing shoes or no shoes?

28 A. No shoes.

1 Q. Were you wearing socks or no socks?

2 A. No socks so we could, like, feel it.

3 Q. Okay. Do you remember Mr. Chandler ever putting sort of
4 like a plastic bag over your face so you couldn't see?

5 A. No.

6 Q. Okay. So when you're doing the taste part of the game,
7 are you seated or standing or on the floor?

8 A. All three.

9 Q. All three?

10 A. Yes.

11 Q. Okay. So sometimes he would put a piece of food or
12 candy in your mouth when you were standing, sometimes when
13 you were seated, and sometimes when you were on the floor?

14 A. Yes.

15 Q. Okay. Do you remember what kind of food was used in
16 putting in your mouth? Could you describe it at all?

17 A. No. No, I don't remember what food he put in.

18 Q. Okay. Do you remember guessing right sometimes?

19 A. Yes.

20 Q. Do you remember guessing wrong sometimes?

21 A. Yes.

22 Q. Okay. But when the candy or the food or the snack item
23 was put into your mouth, Mr. Chandler told you to chew it;
24 right?

25 A. Yes.

26 Q. Okay. Did he also ask you to describe whether the
27 object was soft or crunchy?

28 A. No.

1 Q. Can't remember that? Did he ask you --

2 MS. FILO: Objection, Your Honor. Misstates the
3 testimony.

4 THE COURT: Sustained. That last comment is
5 stricken.

6 MR. MADDEN: Thank you.

7 BY MR. MADDEN:

8 Q. Do you recall Mr. Chandler asking you to describe the
9 taste?

10 A. No.

11 Q. Okay. Now, were there ever any drinks that were used to
12 put liquid into a student's mouth and have them try to guess
13 what was in their mouth from the liquid?

14 A. No.

15 Q. Do you remember ever telling a police officer that
16 liquid was placed in a red cup and then into the student's
17 mouth?

18 A. No.

19 Q. Okay. You don't remember telling a police officer it
20 was water that was in a red plastic cup?

21 MS. FILO: Objection, Your Honor. Asked and
22 answered.

23 THE COURT: Sustained.

24 BY MR. MADDEN:

25 Q. Do you ever remember staying in during recess to play
26 the game with Mr. Chandler by yourself?

27 A. No.

28 Q. Do you remember ever telling a police officer that you

1 did that?

2 A. No.

3 Q. Okay. Thank you, Ly. I have no further questions.

4 However, Ms. Filo may have some questions for you.

5 THE COURT: Cross-examination.

6 MS. FILO: Thank you.

7 CROSS-EXAMINATION

8 BY MS. FILO:

9 Q. Hi, Ly.

10 A. Hi.

11 Q. I just have a few questions for you. Okay?

12 A. Yes.

13 Q. So you said that sometimes you were able to guess what
14 the food was that was put in your mouth and sometimes you
15 didn't know; right?

16 A. Yes.

17 Q. Was it always food?

18 A. Yes.

19 Q. It was always something you could chew up, right, and
20 swallow?

21 A. Yes.

22 Q. Okay. So there was never anything that Mr. Chandler put
23 in your mouth that you weren't able to actually get in your
24 mouth; right? That you weren't able to close your mouth
25 around?

26 A. Yes.

27 Q. Is that correct? Am I making sense or am I confusing
28 you?

1 A. Kind of confusing.

2 Q. Okay. That's fine.

3 So, Ly, like, if you take an M&M, you could put the
4 whole M&M in your mouth and you eat the whole thing; right?

5 A. Yes.

6 Q. In one bite you could eat the whole thing?

7 A. Yes.

8 Q. Did Mr. Chandler ever put anything in your mouth that
9 you couldn't eat? I mean, that wasn't eatable? Was
10 everything eatable?

11 A. Yes.

12 Q. Everything was eatable? Okay.

13 So, Ly, you said that all of the kids in the class
14 played the game; right?

15 A. Yes.

16 Q. Was that all on the same day?

17 A. Yes.

18 Q. Yeah? And was the game played more than one day or just
19 that one day? Does that make sense?

20 A. Yes.

21 Q. Yeah? So was it played just one day or did the game get
22 played lots of days?

23 A. Um, only, like, once a week.

24 Q. Once a week? Okay.

25 Do you remember what time of year it was?

26 A. Yes.

27 Q. What time of year was it?

28 A. 2012.

1 Q. Okay. Do you know if it was before Christmas break or
2 after Christmas break?

3 A. It was before.

4 Q. Before Christmas break? Okay.

5 After Christmas break, did you play the game again,
6 or was Christmas break the -- that wasn't a very good
7 question. I'm going to start over. Okay?

8 A. Yes.

9 Q. Okay. So you said that the game was played with the
10 class before Christmas break?

11 A. Yes.

12 Q. Okay. Do you remember how far before Christmas break?

13 A. No.

14 Q. No? Okay.

15 Ly, you've never had to stay behind at recess by
16 yourself with Mr. Chandler; right?

17 A. Yes.

18 Q. That's correct?

19 A. Yes.

20 Q. Thank you. That's all the questions I have, Ly. Thank
21 you.

22 THE COURT: Redirect?

23 MR. MADDEN: Nothing, Your Honor.

24 THE COURT: Okay. Thank you, Ly. You could step
25 down. You are excused and you could go back with your
26 parents.

27 MR. MADDEN: Could we approach the bench, Your
28 Honor?

1 THE COURT: Yes.

2 (Whereupon, there was a discussion at the bench.)

3 THE COURT: You have another witness, Mr. Madden?

4 MR. MADDEN: I have one more, Your Honor.

5 THE COURT: Okay.

6 MR. MADDEN: One moment, please.

7 Thank you, Your Honor. I apologize.

8 KEVIN DOE,

9 Being called as a witness on behalf of the
10 Defendant, having been first duly sworn, was examined and
11 testified as follows:

12 MR. MADDEN: We're going to climb up these stairs
13 around the corner here. There you go. Now -- good. Now,
14 I'm going to ask you to try to sit up straight, if you can.
15 Good. And scoot the chair in a little bit. I'm going to
16 keep the microphone about this far from your face so we could
17 all hear you. Okay?

18 THE WITNESS: (Shakes head up and down.)

19 MR. MADDEN: Could you say okay?

20 THE WITNESS: Okay.

21 MR. MADDEN: All right. I'm going to do -- in case
22 you need to blow your nose. Sounds like you have a little
23 cold. Feel free to use it.

24 THE COURT: Good afternoon. Hi.

25 THE WITNESS: Hi.

26 THE COURT: What's your name?

27 THE WITNESS: Kevin.

28 THE COURT: And could you spell your name for me,

1 Kevin?

2 THE WITNESS: K-e-v-i-n.

3 THE COURT: Okay. Lawyers are going to ask you
4 some questions. Okay? And if you're nervous, everyone that
5 sits in that chair talking in the courtroom gets nervous.
6 Okay? So it's okay. All right?

7 THE WITNESS: Yes.

8 THE COURT: So all you have to do is listen to the
9 question and try to speak up. And the lawyer asks you a
10 question and says: Are you a boy? You would say yes, but
11 you can't nod your head up and down. You have to say yes.
12 Okay?

13 THE WITNESS: Yes.

14 THE COURT: Mr. Madden will talk to you about some
15 other rules before he starts asking you some questions. All
16 right?

17 Mr. Madden, when you are ready.

18 MR. MADDEN: I'm not sure if I am or not, Your
19 Honor. We may have the wrong Kevin. I'm trying to work that
20 out. May I have a moment to confer?

21 THE COURT: Yes.

22 MR. MADDEN: I think we do have the right one, Your
23 Honor. We'll give it a go.

24 THE COURT: Direct examination whenever you are
25 ready.

26 MR. MADDEN: We'll soon find out.

27 ///

28 ///

DIRECT EXAMINATION

1 BY MR. MADDEN:

2 Q. Kevin, your middle name is Paul; right?

3 A. Yes.

4 Q. Very good. Thank you.

5 Now, just a couple of rules. I talked about these
6 out in the hallway with you. So far you have been perfect.
7 Okay? So I ask you a question and the answer is yes, I want
8 you to answer out loud the word yes and not to shake your
9 head up and down. Okay?

10 A. Okay.

11 Q. And if I ask you a question and the answer is no, I want
12 you to answer out loud rather than shake your head left and
13 right. Okay?

14 A. Okay.

15 Q. And I'm doing that because the nice lady in front of
16 you, her job is to write down every word that we say in this
17 courtroom, but she could only write down words. She can't
18 write down shakes of the head. Okay?

19 A. Okay.

20 Q. All right. Then finally, if I ask you a question,
21 Kevin, and if you don't understand it, I want you to stop me
22 and to tell me that you don't understand my question. And if
23 you tell me you don't understand, I'll ask the question in a
24 different way so that you will understand it. Okay?

25 A. Okay.

26 Q. All right. That's the rules.

27 So what grade are you in, Kevin?

- 1 A. Um, going to fifth grade.
- 2 Q. Okay. Do you go to O.B. Whaley?
- 3 A. Yes.
- 4 Q. Okay. And did you have Mr. Chandler for a teacher when
- 5 you were at O.B. Whaley sometime ago?
- 6 A. Yes.
- 7 Q. And do you remember what grade you were in when you were
- 8 in Mr. Chandler's class?
- 9 A. Yes.
- 10 Q. What grade was that?
- 11 A. Third grade.
- 12 Q. And when you were in third grade, were all of the
- 13 students in the class in the third grade?
- 14 A. No.
- 15 Q. Were there some second-graders?
- 16 A. Yes.
- 17 Q. All right. So this was a combination class?
- 18 A. Yes.
- 19 Q. Okay. Do you remember in Mr. Chandler's class playing a
- 20 game where you tried to guess an object?
- 21 A. Yes.
- 22 Q. All right. Was that something that Mr. Chandler had you
- 23 do, to guess what an object was?
- 24 A. Yes.
- 25 Q. Okay. Do you remember if the game was played by the
- 26 whole class?
- 27 A. I think only some students played.
- 28 Q. Did you play?

1 A. Yes.

2 Q. Okay. Do you remember any time where the whole class
3 watched the game?

4 A. No.

5 Q. But you do remember playing the game, but you don't
6 remember playing it in front of the whole class?

7 A. I don't know if I played it in front of the whole class
8 or not because I was blindfolded.

9 Q. Good answer. So let's start with the blindfold. Could
10 you describe the blindfold for me?

11 A. Yes.

12 Q. Tell me a little bit about it.

13 A. It was black and --

14 Q. Basically, covered your eyes?

15 A. Yes.

16 Q. Okay. And did you put the blindfold on or did Mr.
17 Chandler put the blindfold on?

18 A. We did.

19 Q. He did?

20 A. I.

21 Q. You did? Okay.

22 Do you remember who was in the class with you when
23 you put it on?

24 A. Yes.

25 Q. Who was that?

26 A. I think it was everyone in the class.

27 Q. Okay. So you think it was basically the whole class
28 when you put the blindfold on?

1 A. Yes.

2 Q. Okay. Now, do you remember having to touch an object
3 and try to guess what it was?

4 A. Yes.

5 Q. All right. So I'm going to call that the feel game.
6 Okay? Are we talking about the same thing?

7 A. Yes.

8 Q. Okay. And do you remember how many different objects
9 you were asked to touch?

10 A. No.

11 Q. Was it more than one?

12 A. Yes.

13 Q. All right. Could it have been a paper clip and a
14 pencil?

15 A. Yes.

16 Q. Okay. And did both boys and girls play the game?

17 A. Yes.

18 Q. And when you had to feel this object, did you feel it
19 with your hand or some other part of your body?

20 A. I think one time we touched it with our hand and one
21 time we touched it with our feet.

22 Q. Okay. Now, when you say "we," what do you mean by "we"?

23 A. Um, the boys and girls.

24 Q. Okay. So there were many students in your class playing
25 this game; right?

26 A. Yes.

27 Q. Does that mean yes?

28 A. Yes.

1 Q. Okay. Thank you.

2 When you played this game, were you standing or
3 seated or on the ground? If you remember?

4 A. I think we were sitting on the ground.

5 Q. Okay. Would Mr. Chandler be next to the person who was
6 feeling the object?

7 A. Yes.

8 Q. Okay. Now, we talked about the feel game; right?

9 A. Yes.

10 Q. Was there also a taste game?

11 A. Yes.

12 Q. All right. Tell me about the taste game.

13 A. We just had to taste something and then guess what it
14 was.

15 Q. And how did the thing that you had to taste get into
16 your mouth? Who put it there?

17 A. I think Mr. Chandler put it in our hand and we put it in
18 our mouth.

19 Q. But you're not sure?

20 A. Yes.

21 Q. Okay. That's fair.

22 So was the object of that game to taste the food
23 and guess what the food was?

24 A. Yes.

25 Q. All right. And do you remember if chips and water were
26 used?

27 A. Yes.

28 Q. Okay. Do you remember what kind of chips?

1 A. No.

2 Q. And what about water? How did the water get into your
3 mouth?

4 A. I can't remember.

5 Q. Was it in a bottle or a cup, if you remember?

6 A. I think it was in a small cup.

7 Q. Okay. Did you ever see any cups before you put your
8 blindfold on?

9 A. No.

10 Q. And after you took your blindfold off, did you see any
11 cups?

12 A. Yes.

13 Q. And that's how you know it came from a cup; right?

14 A. Yes.

15 Q. All right. Was it just water or was it flavored water?

16 A. I think it was just regular water.

17 Q. It was regular water, but you're not sure?

18 A. Yes.

19 Q. Okay. Thank you, Kevin.

20 MR. MADDEN: I have no further questions.

21 THE COURT: Cross-examination.

22 MS. FILO: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. FILO:

25 Q. Hi, Kevin.

26 A. Hi.

27 Q. I have a few questions. Okay?

28 A. Okay.

1 Q. Okay. Kevin, you said that all of the kids in the
2 class, or lots of the kids in the class would play this game?

3 A. Yes.

4 Q. Do you know whether it happened -- whether the game
5 happened on one day or did it happen many days?

6 A. I think it was only on one day.

7 Q. Okay. Kevin, you said that you remember chips, like
8 potato chips; right?

9 A. Yes.

10 Q. Yeah? And do you remember anything else that Mr.
11 Chandler used?

12 A. No.

13 Q. No? He never put anything in your mouth that made you,
14 like, gag; right? That made you choke all the way back in
15 your throat?

16 A. No.

17 Q. No? Anything that squirted out liquid? Like, salty,
18 warm liquid?

19 A. No.

20 Q. No? And, Kevin, were you ever asked -- did Mr. Chandler
21 ever make you stay in at recess to be blindfolded with him
22 all by himself?

23 A. No.

24 Q. That never happened to you; right?

25 A. No.

26 Q. No? Okay. Thank you, Kevin.

27 MS. FILO: I don't have any other questions.

28 THE COURT: Redirect?

1 MR. MADDEN: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. MADDEN:

4 Q. Kevin, when you say chips, there are many chips besides
5 potato chips; right?

6 A. Yes.

7 Q. Tell me some other ones.

8 A. Um, I can't remember.

9 Q. Well, I mean, you don't remember then? I mean, now what
10 are some other kinds of chips?

11 A. Hot Cheetos, regular chips that don't taste like
12 anything, and --

13 Q. You said hot Cheetos. Are there regular Cheetos?

14 A. Yes.

15 Q. That aren't hot?

16 A. Yeah, and --

17 Q. You know what pork rinds are?

18 A. Oh, yes. And I don't know any other chips.

19 Q. And did you see some pork rinds being tasted in the
20 classroom demonstration?

21 A. No.

22 Q. But you know what they are?

23 A. Yes.

24 Q. Thank you.

25 MR. MADDEN: I have no further questions.

26 THE COURT: Recross?

27 MS. FILO: No. Thank you, Your Honor.

28 THE COURT: Kevin, thank you. You could step down.

1 Go back with your mother. You are done. You could leave.

2 MR. MADDEN: Your Honor, those are all the
3 witnesses that I have this afternoon.

4 THE COURT: Okay.

5 MR. MADDEN: There will be time for recess to talk
6 about what we're going to do.

7 THE COURT: Okay. Are we going to recall Officer
8 Pierce this afternoon?

9 MS. FILO: We could do that.

10 THE COURT: Because we hadn't been in session that
11 long, why don't we start with Officer Pierce and then we'll
12 take a recess soon.

13 MS. FILO: Okay.

14 THE COURT: Is that agreeable? Okay.

15 Then, Officer Pierce, if you'd retake the witness
16 stand. We're not going to re-administer the oath, Officer,
17 because you are still under oath and you haven't been
18 excused.

19 I know last time we stopped, you were finished with
20 redirect. I was -- before we start cross, did you have any
21 additional questions you wanted to ask?

22 MS. FILO: I do, Your Honor. Actually, could we
23 approach quickly?

24 THE COURT: Sure.

25 (Whereupon, there was a discussion at the bench.)

26 THE COURT: When you are ready, Ms. Filo, you could
27 continue with redirect -- excuse me -- just direct.

28 MS. FILO: Thank you.

CONTINUED DIRECT EXAMINATION

1 BY MS. FILO:

2 Q. Det. Pierce, did you have an occasion to meet with Craig
3 Chandler, or I should say, to speak with Craig Chandler in
4 the sort of lobby area of the San Jose Police Department on
5 January 9th --
6

7 A. I did.

8 Q. -- 2012?

9 A. Yes.

10 Q. Approximately what time did that occur?

11 A. Somewhere after eight. I know it was dark out or
12 getting dark.

13 Q. Det. Pierce, at that time, did you say anything to Mr.
14 Chandler about returning to school?

15 A. Yes, I did.

16 Q. What did you tell Mr. Chandler about returning to
17 school?

18 A. I told him that he should not return to school and he
19 should contact his principal in the morning and seek further
20 instruction.

21 Q. One last question, Det. Pierce. Did you take some
22 information about Mr. Chandler's height?

23 A. Yes.

24 Q. What did you determine his height to be?

25 A. 6'1".

26 MS. FILO: That's all the questions I have, Your
27 Honor.

28 THE COURT: Thank you.

1 Cross-examination, Mr. Madden.

2 MR. MADDEN: Just a minute, please, Your Honor.

3 THE COURT: Yes.

4 CROSS-EXAMINATION

5 BY MR. MADDEN:

6 Q. Det. Pierce, let me start with -- I want to go back to
7 your previous testimony concerning your training, which
8 included how to -- I believe in your words -- how to
9 interview and investigate child molestation cases; correct?

10 A. That's correct.

11 Q. Okay. And this involved on-the-job training and
12 classes; correct?

13 A. That's correct.

14 Q. Classes inside and outside the San Jose Police
15 Department?

16 A. That's correct.

17 Q. All right. And I believe you testified that you went
18 through perhaps hundreds of hours in training on the subject
19 of how to interview and investigate witnesses, or is that not
20 correct?

21 A. That's correct, yes. Interviewing and investigating
22 these types of cases, yes.

23 Q. Okay. Now, you used the word "protocol" I believe in
24 your direct testimony to describe the procedure that the San
25 Jose Police Department's sexual assault investigation unit;
26 is that correct?

27 A. That's correct, yes.

28 Q. Title. All right.

1 The acronym for that is SAIU?

2 A. That's correct.

3 Q. So that's a unit in the -- within the San Jose Police
4 Department dedicated to the investigation of child abuse
5 cases; correct? Involving allegations of sexual abuse?

6 A. Well, it's -- yes, but it is split into three areas.

7 Q. One of them is the area you are in now, which is the
8 child exploit unit?

9 A. Yes. The SAIU you are referring to would be the big
10 umbrella that handles general crimes, but --

11 Q. Okay.

12 A. -- split into others.

13 Q. All right. So the protocol that you were referring to
14 by Ms. Filo, I think, was essentially an internal San Jose
15 Police Department protocol and what you do when you have to
16 do a large number of interviews from the same location, and
17 you have sports teams, schools, big groups; correct?

18 A. That's correct.

19 Q. All right. Now, I want to talk more about the -- well,
20 before I get to that.

21 Tell me a little bit about that protocol, generally
22 speaking, what you tried to do?

23 A. Well, the protocol I'm talking -- maybe protocol is not
24 the right word. It's the common practice that we use in our
25 unit. So I work in the child exploitation detail, and our
26 sergeant has set up a common practice. Since we specifically
27 handle cases like this that have potential for multiple
28 victims, just a common practice that we use, that we go by,

1 where we interview -- try to interview as many students as
2 early as possible, or as many people, not necessarily
3 students. It could be soccer players, baseball, church.

4 Q. And the general principle behind that is to try to do as
5 many simultaneous interviews as possible to avoid the
6 contamination of those statements; correct?

7 A. That's correct.

8 Q. In other words, if you did them serially, one after the
9 other after the other, it might take days or weeks to get
10 through it; right?

11 A. That's correct. Yes.

12 Q. Then the danger of a later period of time is that the
13 later children may be influenced by things that they heard or
14 read about that the other kids said or did; right?

15 A. That's correct.

16 Q. Okay. And that would also apply to like, for example,
17 media contamination?

18 A. Yes.

19 Q. All right. Now, in this particular case, I believe you
20 indicated -- I think your words were that the vast majority
21 of the interviews in this case took place basically at the
22 same time?

23 A. We did a large portion of the interviews on January
24 10th.

25 Q. Okay. And I won't hold you to it, but I believe I heard
26 the number 77 as the number of interviews that were conducted
27 in total of children in this case?

28 A. Somewhere in that area, yes.

1 Q. I'm not expecting you to have the exact number, and I
2 don't want to put words in your mouth, so I won't. But the
3 first day the interviews began on what date?

4 A. The very first interview was done on January 9th.

5 Q. Okay. And that interview would have been Isabell? She
6 would have been ground zero; correct?

7 A. That's correct.

8 Q. Okay. Isabell and her mother, Luisana?

9 A. That's correct.

10 Q. All right. And that is in connection with also at the
11 time the then principal, Lea Peery; correct?

12 A. Yes.

13 Q. All right. The second interview was of Becky; correct?

14 A. Becky was interviewed -- I'm not sure in the exact
15 order, but, yeah, she was interviewed the next day.

16 Q. I need to be more fair with you here. Right now I'm
17 trying to -- I'm going to do it this way. I just want to get
18 a sense of the dates. If we go through the five counts and
19 the five children, could you, if you feel comfortable enough
20 from memory, tell me when the interviews were and who did the
21 interviewing? Or would you like to have the reports?

22 A. Not all of them because I did not interview all five
23 children, but I could do my best.

24 Q. Let's see where we could go with your memory and see if
25 we have to do anything with that after that. So I put the
26 names up here in order from top to bottom for Counts 1, 2, 3,
27 4, and 5. So that's Isabell, Becky, Laurie, Wendy, and
28 Arleth. Okay?

1 A. Yep.

2 Q. So let's start at the top. So Isabell was interviewed
3 the first time, if you remember, by whom?

4 A. I believe patrol made first contact with her, and then I
5 interviewed her.

6 Q. Do you remember who in patrol?

7 A. I do not.

8 Q. You remember what day that was?

9 A. That was on the 9th. I know Officer Koenig was the
10 responding officer, but I don't know if he did the interview.

11 Q. I believe he had a sergeant with him named Bishop.
12 Sound familiar?

13 A. Bishop?

14 Q. No?

15 A. Never heard that name.

16 Q. This is patrol that would have been on the --

17 A. 9th.

18 Q. -- 1/9/12; correct?

19 A. That's correct.

20 Q. All right. Then your first interview, or your interview
21 with Isabell, was on what date? The 9th?

22 A. I believe I did the interview the same day, later on
23 that day.

24 Q. Do you remember where that interview -- your interview
25 of Isabell took place?

26 A. CIC.

27 Q. Okay. That would be the acronym for the Children's
28 Investigation Center?

1 A. Children's Interview Center.

2 Q. I'm sorry. Children's Interview Center. That is over
3 on First Street in the Bank of America building?

4 A. It is.

5 Q. Not far from this courthouse?

6 A. No. Right on the corner.

7 Q. Okay. All right.

8 Do you remember if there were any additional
9 interviews of Isabell on the 9th?

10 A. I don't believe so.

11 Q. Okay. Do you remember if there were any additional
12 interviews of Isabell by any members of the San Jose Police
13 Department after the 9th?

14 A. I believe I interviewed Isabell later, I'm not sure what
15 date it was, to clarify some things, but I'm not sure the
16 date.

17 Q. Could you look at your report and tell me?

18 A. I could, yeah.

19 Q. You have that in front of you?

20 A. I don't know if I have that portion. I only have
21 portions.

22 Q. It was in January?

23 A. Yeah, it was in January.

24 Q. Was it before January 17th?

25 A. Off the top of my head, I couldn't tell you.

26 Q. Okay. What was the physical location of that interview?

27 A. I believe it was at her aunt's house.

28 Q. Do you remember her aunt's name?

1 A. It was her support person when she was up here
2 testifying. I don't remember her name offhand.

3 Q. Okay. And would that be a complete list of the
4 interviews of Isabell?

5 A. I believe so.

6 Q. Okay. So let's move to Becky. Do you remember what
7 member of the San Jose Police Department first interviewed
8 Becky?

9 A. That would be me.

10 Q. Okay. Where would that have been?

11 A. At O.B. Whaley.

12 Q. What date?

13 A. The 10th.

14 Q. Okay. And that was at O.B. Whaley. And was there a
15 second interview on the 10th or another day by you?

16 A. Yes, same day.

17 Q. All right. That would have been at the CIC?

18 A. That's correct.

19 Q. Later that same day; right?

20 A. Yes. It was actually directly after her interview at
21 O.B. Whaley.

22 Q. Now, the interview that you did of Becky at O.B. Whaley,
23 was that video recorded?

24 A. No.

25 Q. Was it audio recorded?

26 A. It was.

27 Q. And the interview of Becky at the CIC was video and
28 audio recorded; right?

1 A. Video and audio, yes.

2 Q. And going back to Isabell, basically, the CIC interviews
3 are always video and audio?

4 A. Yeah. Unless there is any kind of equipment
5 malfunction, yeah, the room is wired with sound and video.

6 Q. And broadening this to include all five of the children
7 who are interviewed at the CIC, we know those were all audio
8 and video recorded because we've seen all of those exhibits
9 in court; correct?

10 A. Yes, that's correct.

11 Q. And were there any additional interviews of Becky by you
12 or anyone else at SJPD?

13 A. I did not. If someone else did, I didn't know about it.

14 Q. Okay. All right.

15 Moving to Laurie. Do you recall the first person
16 from the San Jose Police Department to interview Laurie?

17 A. I do not. No.

18 Q. Do you know where that interview took place?

19 A. Um, I do not know.

20 Q. Do you believe that an interview -- strike that.

21 You interviewed Laurie at some point?

22 A. I did not interview --

23 Q. You never interviewed Laurie?

24 A. I interviewed Becky and Isabell. That's it.

25 Q. You never interviewed Laurie, Wendy, or Arleth?

26 A. They were interviewed by other detectives.

27 Q. I won't torture you by going through that list. These
28 are the two that you did. Have you ever -- obviously, you

1 know that there were CIC interviews of these three children;
2 correct?

3 A. Yes.

4 Q. Have you ever viewed the CIC tapes?

5 A. Yes.

6 Q. Have you read transcripts of the CIC interviews?

7 A. Um, well, we went over them in court here. Yes.

8 Q. Was that the first time you read them?

9 A. Yes.

10 Q. Okay. Now, do you know what date Laurie was
11 interviewed?

12 A. I know that a large portion of the children were
13 interviewed on the 10th. I know some of the girls were
14 interviewed on the 17th, but I could not testify which date
15 it was. I'm sure it's in the report, but I don't recall off
16 the top of my head.

17 Q. So you think it was either the 10th or the 17th?

18 A. Somewhere in there, yes.

19 Q. How about Wendy and Arleth? Do you know when they were
20 interviewed?

21 A. I believe Wendy was interviewed on the 17th, and
22 Arleth -- I'm not sure.

23 Q. If I were to suggest to you that the 17th was also on
24 the date that Arleth was interviewed, would that be
25 consistent with your understanding of the process?

26 A. Yes. I know we did go back on the 17th. There was
27 quite a few interviews on the 17th as well.

28 Q. Now, you were in court when Mr. Lara testified, the --

1 A. The vice principal, yes.

2 Q. Administrator from O.B. Whaley School?

3 A. Yes.

4 Q. He testified being at O.B. Whaley I believe on the
5 morning of January the 9th; correct -- January the 10th?

6 A. 10th, yes.

7 Q. Thank you. Thanks for the correction.

8 I remember him telling that they were expecting an
9 onslaught of reporters. You remember that testimony?

10 A. I do.

11 Q. So this case had significant media coverage; correct?

12 A. Yes, it did.

13 Q. It was all over the newspapers and it was all over the
14 TV; correct?

15 A. It was.

16 Q. And do you remember if the media coverage would have
17 begun on the 9th or the 10th?

18 A. It did not. It did not begin on the 9th because we
19 didn't -- I don't know when we did our press release. We
20 didn't do our press release right away.

21 Q. As you sit here today, does it seem likely you probably
22 did that on or about the 10th?

23 A. Um, you know what, I could not testify. My sergeant is
24 the one that works with our PIO. I didn't do a press
25 release. I did not release anything to the press.

26 Q. I understand, but --

27 A. It was somewhere around there. I don't believe it was
28 the 9th because we were still in the middle of the

1 investigation.

2 Q. Fair enough. Probably the 10th?

3 A. Probably.

4 Q. Okay. So it was on every TV station? Media's all over
5 the police department?

6 A. Yes.

7 Q. All right. Media all over the school?

8 A. I don't know. I didn't see any media in the school when
9 I was there.

10 Q. That first week, do you remember seeing Mr. Chandler's
11 face on the TV broadcast? The news broadcast?

12 A. I do.

13 Q. Basically, was his booking photograph?

14 A. I would assume that's what it was. Yes.

15 Q. Okay. And were you also aware that week that there were
16 letters sent by the administrators at O.B. Whaley School to
17 the parents of O.B. Whaley students?

18 MS. FILO: Objection, Your Honor. Calls --

19 MR. MADDEN: Concerning this subject.

20 MS. FILO: Calls for speculation and lack of
21 personal knowledge.

22 MR. MADDEN: I don't know if it does or not.

23 THE COURT: Um, I'm going to sustain the objection.

24 MR. MADDEN: All right.

25 BY MR. MADDEN:

26 Q. So with respect to the first three children, assuming
27 Laurie was interviewed on or about the 10th, those first
28 three children were basically interviewed in the first wave

1 that you were talking about; correct?

2 A. That's correct, yes.

3 Q. By the first responders, so to speak?

4 A. Yes.

5 Q. Okay. However, children four and five, Wendy and
6 Arleth, were a week later?

7 A. That's correct.

8 Q. And in their case, after all of the media events
9 surrounding this case had been in the media for a week?

10 A. Yes.

11 Q. All right. So tell me about -- strike that.

12 Does the San Jose Police Department teach a
13 particular protocol for the forensic interviews of children
14 suspected as being victims of child molestation?

15 A. Yes.

16 Q. And could you tell me something about that protocol?
17 You know the name of it?

18 A. We use Dr. Lyon.

19 Q. Dr. Lyons?

20 A. Lyon. I think it's L-y-a-n [sic]. First name is
21 Thomas.

22 Q. L-y-a-n?

23 A. L-y-a-n, yes.

24 Q. Is there a name associated with this protocol?

25 A. I don't believe so.

26 Q. Have you ever heard of the acronym NICHD?

27 A. I have.

28 Q. What does that stand for?

1 A. I believe it's the National Institute for Child Health
2 and Development. Dr. Lyon's program is an offshoot of that.

3 Q. Are you familiar with both protocols?

4 A. I'm familiar with Dr. Lyon's, the one we use.

5 Q. I notice that -- I believe it was Det. Perez's
6 interview, he referred to a modified version of the NICHD
7 protocol. Does that sound familiar?

8 A. Yeah, that's what he's referring to, Dr. Lyon.

9 Q. But to your -- you don't know what the name of Dr.
10 Lyon's protocol is, or it doesn't have a name?

11 A. I don't know the answer to that.

12 Q. Are there any textbooks that you're provided or study
13 materials concerning Thomas Lyon's protocol?

14 A. Um, I do not know. I didn't go to the Thomas Lyon -- if
15 there is any protocol or training, I did not go to his
16 training, so I can't testify to that.

17 Q. What training did you go to?

18 A. I went to -- my last training for interviewing children
19 was quite a while ago. I have been to several trainings
20 across the country for our Internet crimes against children
21 task force. I have not been to his.

22 Q. To Dr. Lyon's?

23 A. No.

24 Q. You've never been to Dr. Lyon's. Does he teach a class?

25 A. I don't know if he teaches it or someone else teaches
26 it. We just have the -- go by the questionnaire that we go
27 through.

28 Q. What did you mean "go by the questionnaire"?

1 A. It's a list of different questions to ask.

2 Q. That's something that the San Jose Police Department
3 provides the officers?

4 A. That's at the CIC center, yes.

5 Q. Does it have a title?

6 A. Um, I actually have one here. I could look and see if
7 it has a title, if you want?

8 Q. Is that an extra copy?

9 A. You could have this copy.

10 Q. Great.

11 MR. MADDEN: Then I will mark that as defense next,
12 Your Honor. May I have this marked as defense next, and it's
13 entitled "10 Step Investigative Interview." Thank you.

14 (Whereupon, Defense Exhibit G was marked for
15 identification.)

16 THE COURT: That will be G.

17 MR. MADDEN: That will be G, yes. Let me staple
18 this together. Could you give me a moment to read this, Your
19 Honor, then I will ask him some questions?

20 THE COURT: Yes.

21 BY MR. MADDEN:

22 Q. So this basically appears to me, correct me if I'm
23 wrong, be sort of bare-bones questions to ask a child?

24 A. That's correct.

25 Q. In a forensic interview; right?

26 A. That's correct.

27 Q. And it doesn't seem to talk about anything, but
28 questions to ask a child; correct?

1 A. That's correct.

2 Q. And you're not really familiar with the NICHD protocol
3 for forensic interviews?

4 A. I've heard of it. I know this is a form of it.

5 Q. But you couldn't sit there and recite it to me?

6 A. Absolutely not.

7 Q. Okay. To your knowledge, have you ever read it?

8 A. Um, if I had, it's been a while.

9 Q. Okay. Does the Thomas Lyon protocol, we're going to
10 call it a protocol, address the issue of determining whether
11 or not the child has been influenced by any sources?

12 A. I don't believe so. It's just questions.

13 Q. Okay.

14 A. I don't believe that's a question on it.

15 Q. Would you agree with me, that a goal of a forensic
16 interview is not only to ask the child questions that will
17 elicit information; correct?

18 A. That's correct.

19 Q. But at the same time, the goal is to make sure that what
20 the child is saying is a product of his or her memory rather
21 than something that she's learned from some other source?

22 A. That will be fair to say.

23 Q. Okay.

24 MR. MADDEN: Your Honor, I have no other questions
25 at this time.

26 THE COURT: Okay. Thank you.

27 Ms. Filo, redirect?

28 MS. FILO: Yes. Thank you, Your Honor.

REDIRECT EXAMINATION

1 BY MS. FILO:

2 Q. Det. Pierce, you said you have been to hundreds of hours
3 of training, all of which some level involved interviewing
4 children; right?

5 A. Interviewing and investigating child molestation cases,
6 yes.

7 Q. So irrespective of the various schools of thought --
8 strike that.

9
10 You are aware, are you not, that there are several
11 schools of thought about specifically how to interview
12 children?

13 A. That's correct.

14 Q. And all of them have some basic tenets; correct?

15 A. Yes.

16 Q. What are they?

17 A. Could you -- I'm sorry. Could you ask the first
18 question?

19 Q. Sure. Regardless of the specific developer of the
20 protocol, or whatever you want to call it, all experts who
21 talk about interviewing children will tell you what?

22 A. Well, first, we always in the beginning of the interview
23 determine whether the child knows the difference between a
24 truth and lie, and then we just ask questions and let them
25 talk.

26 Q. Okay. So you want to know if the child can even tell
27 the difference between a truth and a lie; right?

28 A. That's correct.

1 Q. And sometimes with, you know, three-year-olds that could
2 be a problem; right?

3 A. It can.

4 Q. Okay. And you need to impress upon the child that
5 telling the truth is important?

6 A. That's correct.

7 Q. Is there any suggestion about using leading questions?

8 A. Yes. They do not like leading questions. Just ask
9 basic questions, let the child answer, and then you could
10 expand on the child's answer.

11 Q. So one of the most fundamental basic principles of child
12 interviewing is let the child talk; right?

13 A. That's correct.

14 Q. Have them talk more than you talk?

15 A. That's correct.

16 Q. Okay. So use non-leading questions?

17 A. Yes.

18 Q. You would want to do things like: Little girl, can you
19 tell me why you're here?

20 A. That's correct.

21 Q. Could you tell me what happened to you?

22 A. Yes.

23 Q. Who was there?

24 A. That's correct.

25 Q. And let them give you as much information as possible?

26 A. That's true.

27 Q. Okay. Is it recommended that you use yes or no
28 questions?

1 A. No.

2 Q. Again, you're trying to get them to give you as much
3 information as possible?

4 A. That's correct.

5 Q. Okay. Are you -- is it recommended that you use what's
6 commonly referred to as closed questions, where the child
7 only has a choice between saying this happened or that
8 happened?

9 A. No. We ask them open-ended questions and just let them
10 explain it and then we could expand on that.

11 Q. All right. And you have personally never conducted the
12 perfect interview; right?

13 A. I don't think anybody has.

14 Q. You've seen dozens of interviews conducted?

15 A. Way more than dozens, yes.

16 Q. Is each interview a little bit different?

17 A. Yes. It's -- you got to think -- it depends on the
18 child and it depends on the interview. Every interview has a
19 different style. Every child is going to be different. Some
20 children are very easy to elicit information from and some
21 children it's very hard. Some children will not give you any
22 information, even though you know something happened.

23 Q. Okay. Det. Pierce, have you ever gone into an interview
24 with a child hoping a -- trying to get information that this
25 child is a victim?

26 A. No.

27 Q. No? So you're -- what is your goal in interviewing
28 children?

1 A. My goal is just to find out if something happened.

2 That's it.

3 Q. You don't get paid more if they make disclosures to you;
4 right?

5 A. Absolutely not. I don't like talking to children about
6 this, but it's my job. I do not get paid extra for eliciting
7 information from anybody. No.

8 Q. Okay. Your job is simply to find out what happened?
9 You have no stake in the outcome of any of these cases?

10 A. Absolutely not.

11 Q. Thank you.

12 MS. FILO: Nothing further, Your Honor.

13 THE COURT: Recross?

14 MR. MADDEN: Thank you, Your Honor.

15 RECROSS-EXAMINATION

16 BY MR. MADDEN:

17 Q. Officer Pierce, is there a process within the San Jose
18 Police Department for evaluating interviews by sexual assault
19 investigators?

20 A. Is there a process for evaluating?

21 Q. Yeah.

22 A. I don't believe so.

23 Q. Okay. So, for example, as Ms. Filo indicated, you
24 really want to avoid leading questions; right?

25 A. That's correct.

26 Q. Because you are suggesting the answers there; right?

27 A. That's correct.

28 Q. And you want to really avoid close-ended questions

1 because you have a limited universe of choices, which is not
2 good; right?

3 A. That's correct.

4 Q. Those are a couple of examples. Now -- so you are
5 trained not to do that; right?

6 A. Correct.

7 Q. But subsequent to the training, when you get out on the
8 field and start doing these interviews, there is no process
9 at the San Jose Police Department to find out if, in fact,
10 that is what you are doing?

11 A. You mean, like an evaluation process?

12 Q. Yes.

13 A. I don't know of any. I mean, our sexual assault unit
14 handles over 4,500 cases a year, so I don't think it will be
15 feasible to have an evaluation, but I don't know if they do.

16 Q. So does that mean your volume is so big that you just
17 really don't have time to evaluate your work?

18 A. That's not a question for me. I wouldn't be evaluating
19 my own. I don't know if they have an evaluation process. I
20 have never heard of an evaluation process, but I can't answer
21 that one.

22 Q. Have any of your interviews been evaluated, to your
23 knowledge?

24 A. By?

25 Q. Anybody at the San Jose Police Department?

26 A. Not to my knowledge.

27 Q. Thank you.

28 MS. MADDEN: I have no further questions.

1 THE COURT: Redirect?

2 MS. FILO: Thank you.

3 FURTHER REDIRECT EXAMINATION

4 BY MS. FILO:

5 Q. Det. Pierce, when you bring over your cases to be filed
6 at the District Attorney's Office, if the interview is
7 horrible, I mean, if the interview doesn't provide any
8 information, or the officer was so suggestive in the
9 interview that the interview has no evidentiary value, that
10 would be an evaluation; right?

11 A. Yes.

12 Q. Yes? I mean, we could reject a case and not file it
13 because the officer has provided us with such a poor
14 interview that it's not worth bringing to court?

15 A. That's true.

16 Q. Thank you.

17 THE COURT: Recross?

18 MR. MADDEN: None, Your Honor.

19 THE COURT: Thank you, Officer Pierce. You could
20 step down.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: Ladies and gentlemen, at this time,
23 we're going to take the evening recess, and I have to address
24 an issue in the morning. So it's my expectation we won't get
25 started until about 9:15. I will make every effort to start
26 at 9:15.

27 I will order all members of the jury to report to
28 the jury assembly room tomorrow morning by 9:15, and have a

1 good evening. Thank you very much.

2 (Whereupon, the jurors were excused and the
3 proceedings were had outside the presence of the jury.)

4 THE COURT: We'll go back on the record. The jury
5 has left the courtroom. As I recall, during Ms. Cardoso's
6 testimony, Ms. Filo, you made reference to various photos of
7 the chairs, which are now marked as 10 and 11. Those are the
8 physical chairs, and you indicated that you would get hard
9 copies later and have them marked as exhibits; correct?

10 MS. FILO: Correct, Your Honor.

11 THE COURT: Okay. You provided the hard copies,
12 which are being marked 17 through 22 and --

13 THE CLERK: 23.

14 THE COURT: I'm sorry. 23.

15 (Whereupon, People's Exhibits 17 through 23 were
16 marked for identification.)

17 THE COURT: I will note just for the record,
18 People's 17 is a front view picture of item SYO-01, which is
19 People's 10. People's 18 is a picture of the back of item
20 SYO-01. There is a close-up of the back of a chair, which is
21 marked People's 19, and am I correct in assuming with the tag
22 this is SYO-01?

23 MS. FILO: Correct.

24 THE COURT: Okay. Thank you. And then People's 20
25 is a front view photo of the chair, which is item SYO-02,
26 which is marked as People's 11. And then People's 21 is a
27 close-up picture of the back of a chair, which is also
28 SYO-02?

1 MS. FILO: Yes, Your Honor.

2 THE COURT: Okay. Then People's 22 is another back
3 photo of SYO -- is this 01 or 02?

4 MS. FILO: 02, Your Honor.

5 THE COURT: 02, which is People's 11. And then a
6 close-up picture of a photograph, People's 23, of the chair,
7 which is SYO --

8 MS. FILO: 02.

9 THE COURT: 02. And for the record, that's a
10 description of the photos that have been marked at this time.

11 MS. FILO: Your Honor, each of those photos was
12 actually shown to Ms. Cardoso during her testimony, and they
13 are in the order in which they were shown to her.

14 THE COURT: Thank you.

15 MS. FILO: The last thing I had intended to do was
16 bring a hard copy of the photograph of Sgt. Warden standing
17 next to Mr. Chandler's chair. And I promised the Court I
18 would do that over the lunch hour and then left the disk in
19 the courtroom that had that photograph on it. So I will take
20 that back with me now and have that for the Court in the
21 morning.

22 THE COURT: Okay. I believe this was a photo of
23 the gentleman that was 6'1"?

24 MS. FILO: Correct.

25 THE COURT: That was Sgt. Warden?

26 MS. FILO: Right.

27 THE COURT: We said that we were going to mark that
28 People's 14.

1 MS. FILO: Thank you.

2 THE COURT: We'll be in recess. I will order
3 counsel here tomorrow morning at 9:00 a.m. I have to leave.
4 So see you tomorrow morning 9:00 a.m.

5 (Whereupon, the Court took the evening recess.)
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1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)

4 I, JAMIE L. MIXCO, HEREBY CERTIFY THAT:

5 The foregoing is a full, true, and correct
6 transcript of the testimony given and proceedings had in the
7 above-entitled action taken on the above-entitled date; that
8 it is a full, true, and correct transcript of the evidence
9 offered and received, acts and statements of the Court, also
10 all objections of counsel, and all matters to which the same
11 relate; that I reported the same in stenotype to the best of
12 my ability, being the duly appointed and official
13 stenographic reporter of said Court, and thereafter had the
14 same transcribed into typewriting as herein appears.

15 I further certify that I have complied with CCP
16 237(a)(2) in that all personal juror identifying information
17 has been redacted if applicable.

18
19 Dated:

20
21
22 _____
23 Jamie L. Mixco, C.S.R.
Certificate No. 12708

24 ATTENTION:
25 CALIFORNIA GOVERNMENT CODE
SECTION 69954(D) STATES:

26 "ANY COURT, PARTY, OR PERSON WHO HAS PURCHASED A TRANSCRIPT
27 MAY, WITHOUT PAYING A FURTHER FEE TO THE REPORTER, REPRODUCE
28 A COPY OR PORTION THEREOF AS AN EXHIBIT PURSUANT TO COURT
ORDER OR RULE, OR FOR INTERNAL USE, BUT SHALL NOT OTHERWISE
PROVIDE OR SELL A COPY OR COPIES TO ANY OTHER PARTY OR
PERSON."